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Industrial Competition and Combination



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EDITOR: EMORY R. JOHNSON

ASSISTANT EDITOR: ELLERY C. STOWELL

EDITOR BOOK DEPARTMENT: ROSWELL C. McCREA

ASSOCIATE EDITORS: THOMAS CONWAY, JR., G. G. HUEBNER, S. S. HUEBNER
CARL KELSEY, CLYDE L. KING, J. P. LICHTENBERGER, L. S. ROWE

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ITALY: Giornale Degli Economisti, via Monte Savello, Palazzo Orsini, Rome

SPAIN: E. Dossat, 9 Plaza de Santa Ana, Madrid

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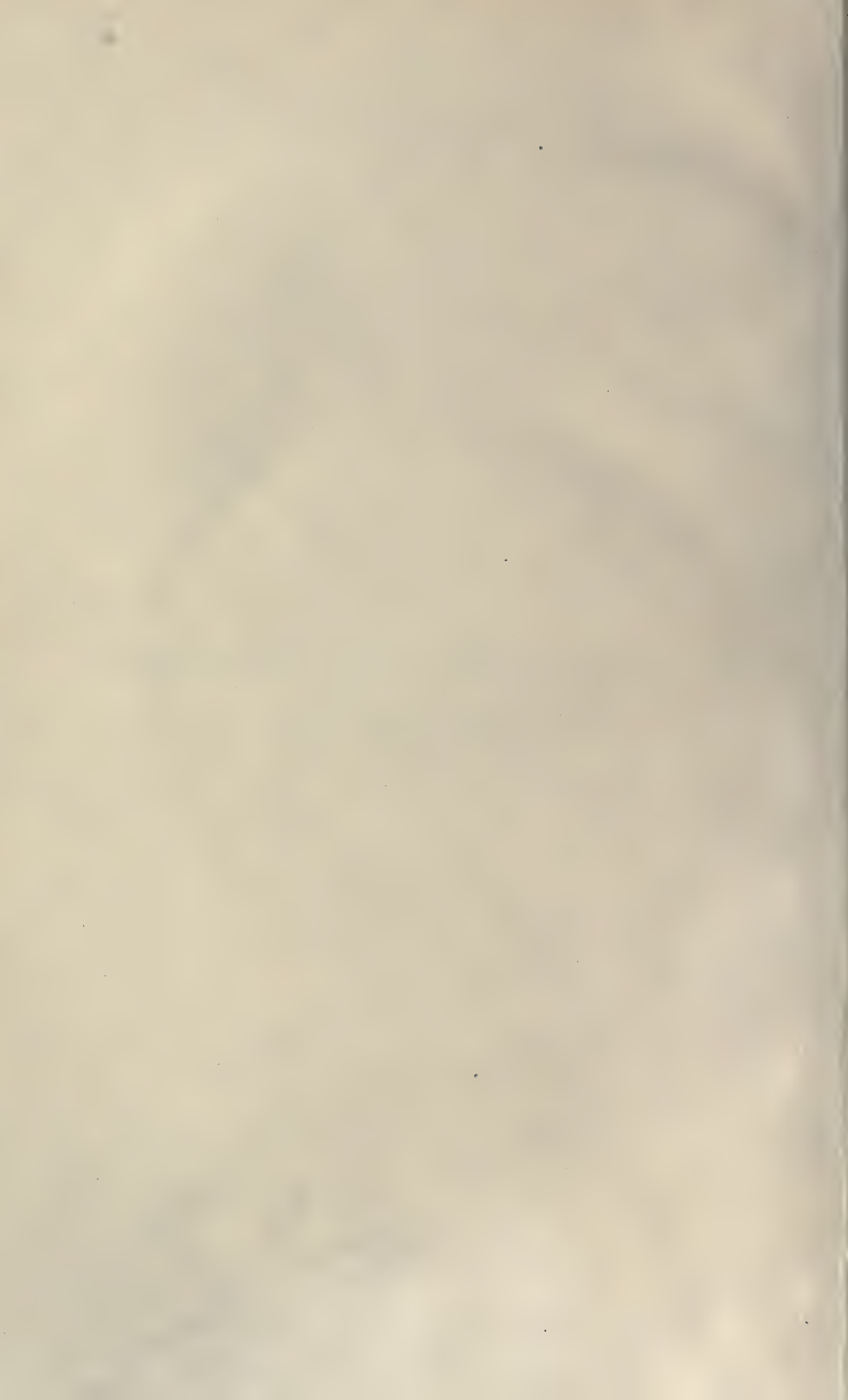
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PART ONE

*The Effect of Industrial Combinations
on Labor Conditions*



HARMFUL EFFECTS OF INDUSTRIAL COMBINATIONS ON LABOR CONDITIONS

BY JOHN WILLIAMS,

President Amalgamated Association of Iron, Steel and Tin Workers, Pittsburgh.

The last decade has seen a great industrial advancement, but we have also witnessed a more proportionate growth of monopolies. A combination of business interests ought to be a blessing to humanity, and would be so if the promoters kept in view the welfare of the masses, but under a system of private gain or self-appropriation at any cost it proves to be a curse.

John D. Rockefeller, president of the Standard Oil Company, in a written statement submitted to the Industrial Commission, January 10, 1900, gave the following as some of the advantages of industrial combinations: (1) Command of necessary capital; (2) extension of limits of business; (3) economy of business; (4) power to give the public improved products at less prices and still make a profit for stockholders; and (5) permanent work and good wages for laborers.

That the great industrial combinations have succeeded in commanding the necessary capital will hardly be questioned. That they have succeeded in extending the limits of business is an acknowledged fact. That they have mastered the principle of economy will be accepted without contradiction, so far as they apply to working conditions and decreased cost of production. That they have the power to give the public improved products at less prices, while true, does not follow out in general practice. That they make a profit for stockholders is evidenced by their immense earning power, and by the high prices for which they sell their product. That they furnish permanent work and good wages for laborers is not borne out, taking as a criterion the largest combination in the steel industry, the United States Steel Corporation. Not over five per cent of their men earn over \$5.00 per day, twenty-three per cent receive \$2.50 up to \$5.00 per day and seventy-two per cent \$2.50 per day or less.

For common labor the average price in all their plants is about sixteen cents per hour, computed on rate paid in Pittsburgh, Chicago, and Birmingham, Alabama. A majority of the employees work a

twelve-hour day and twenty per cent of the 153,000 employees of the blast furnaces, steel workers, and rolling mills customarily work seven days per week. The hardship of twelve-hour days and a seven-day week is still further increased by the fact that every week or two weeks, as the case may be, when the employees of the day shift are transferred to the night shift, and vice versa, employees remain on duty without relief eighteen or twenty-four consecutive hours, according to the practice adopted for the change of shifts. The most common plan to effect this change of shifts is to work one shift of employees on the day of change through the entire twenty-four hours, the succeeding shift working the regular twelve hours when it comes on duty.

Since the formation of our large industrial combinations there has been a marked increase in production, made possible partially through the introduction of improved machinery and continuous operation, which in turn has increased the mental and physical strain of the workers engaged in the industry.

It was expected that the introduction of improved machinery would lighten the burden of the toilers and would be instrumental materially in decreasing poverty. This expectancy has not been realized. Instead of making the burdens of the workers lighter, instead of decreasing poverty in the ranks of the workers, we find that the gap between the rich and the poor, between employer and employee, is becoming wider day after day, labor conditions are becoming more oppressive and the struggle for existence more intense.

In the realms of industry the big mill is absorbing the little mill; in the business world the big store is crushing out the little store; in the rural districts the great farm is absorbing the little farm. Those who were formerly landlords are now tenants, former employers are now employees, in industry a new invention is introduced, and the mechanic, like Othello, finds that his occupation is gone.

Among the workers the feeling of unrest is increasing daily, brought about by intolerable conditions which cannot last. Yet we are wondering why so many of the toilers are looking to and advocating the ballot as the only means of redemption from industrial slavery.

The mere formation of combinations is no ground for complaint, providing their formation enables them to place the manufactured product in reach of the consumer at a reduced price. When, however,

combinations fail to do this, but seek only to secure large financial returns at the expense of the consumer, and the expense of labor, by increasing the price of the manufactured product, and by reducing wages it becomes a menace not alone to the workers, but to the country at large.

By reason of the vast improvement in machinery, a laborer can now produce much more than he could formerly under the old conditions, hence is entitled to a fair share of the increased product. As a rule he is not getting it. The consumer, too, is entitled to a fair share in the reduction of the cost of production. He is not getting it. The vast bulk of the profit realized through the introduction of modern machinery and continuous operation by the workers is confiscated for the benefit of a bare handful of men. This concentration of wealth with its unequal distribution, its accumulation in the hands of a few, leaves a mass of wealth producers in poverty and neglect. A retrospective glance into the pages of history will demonstrate that this is one element that contributed largely to the destruction of mighty empires which have gone before, and is the rock upon which our own republic will be wrecked if ways and means are not adopted to check its onward course.

A comparison of labor conditions under our modern industrial system with those in existence before the era of large combinations shows conclusively that the conditions of the workers from an economic and social standpoint were much superior under the old method of independent operation. Under the present industrial system the workers do not enjoy the same freedom, and do not have the same privileges accorded them as they did under the old system. It was the general rule under independent operation that the owner of the plant, he who had his money invested in the proposition, was the general manager of the concern, not theoretically, but practically. This enabled him to come into close contact with the men he employed. It was a common occurrence under the old system for men to spend their entire lives in the employ of one particular firm or corporation. Their long years of service made them feel as though they were a part of the concern, which in reality they were. They felt that the success of the company was their success, that the disgrace of failure was their failure, hence a perfect system of co-operation prevailed.

As illustrative of the feeling that existed between employer and

employee the following is a case in point. A product of old Erin had spent his entire working life in the employ of a company engaged in the glass industry, and had grown old in the service. One of the owners occupied the position of general manager, having a superintendent to assist him in taking care of the physical equipment of the plant. On one occasion it became necessary to make a change in the superintendency. The new superintendent on assuming charge noticed the old gentleman already referred to, and felt that the weight of years rendered him incapable of giving the service that a younger man was capable of giving, hence the superintendent informed the old gentleman that after one week his services would be dispensed with. To the consternation of the superintendent he was told that he did not have the power to discharge him, in language which, if not elegant, was forcible, assuring him that he was a part of that concern. Feeling a little disturbed, the old fellow went into the office, related the incident to the owner, when he was asked as to what reply he had made to the superintendent. In reply he stated the conversation that had taken place, which elicited a hearty response from his employer. It goes without saying he was not discharged. In this case there was a responsive feeling between the employer and employee which is entirely lost under modern industrial conditions.

In direct contrast the following incident came under my notice as to methods that are sometimes employed by modern industrial combinations. A man in the prime of life, a skilled mechanic, went into a machine shop to apply for a position. Going to one of those in charge, he inquired as to whether they needed men and was informed they did, but was soon assured that he did not have a chance to secure employment, as his gray hair indicated that he had spent a long number of years in the service, hence his usefulness was in a measure impaired. However, he was one of those men who can readily adapt himself to any condition that confronts him, and realizing that he could not get employment on account of his grey hair he repaired to a barber shop, had his hair trimmed and afterwards dyed black, when he returned to the very same shop and secured employment. He is to-day giving useful service in the employ of one of the large industrial corporations and bids fair to continue doing so for a long tenure of years.

The majority of those who are financially interested in modern combinations as a general proposition are far removed from the center

of activity, know little or nothing regarding the human side of the proposition, are entirely inaccessible to the employees, and depend entirely upon supernumeraries for information, who in many instances are more interested in the bonuses they receive than they are in the human problem.

Owing to the competition that exists between the various plants owned and controlled by industrial combinations, the rivalry to reduce cost of production has had the effect of pitting the management of the various plants one against another. This condition has been brought about by a system inaugurated for the purpose of operating plants at the least minimum cost. Information from the higher authorities is imparted to the superintendent that a plant in a certain locality is operating at a ten or twenty per cent lower cost. In order that he can meet the conditions prevalent in this particular plant, he speeds his employees to the limit of human endurance, and in some cases accomplishes his end by reducing the working force.

Under the old method of independent operation each plant was separate and distinct in itself. The competition among the superintendents did not exist, hence the method of competition in this respect was not in evidence, which in turn resulted that the workers enjoyed better and more humane conditions. The speeding process as we know it to-day did not exist. In addition the representatives of the men and those who were directly interested met around the table and thrashed out their differences. Under present industrial conditions propositions affecting employers and employees are not discussed freely and fairly, that condition prevailing only so far as it affects concerns who are still operating under the old independent method. Large industrial combinations will not deal with the representatives in any capacity, and when some of them who now refuse to discuss the problem that exists between capital and labor did deal with the representatives of labor they did not do so with the same characteristic candor that marked the conferences held under the old method of operation. This has been directly resultant in estranged relations and explains the embitterment of the once cordial relations of employer and employee.

Nor is it alone in the matter of wages and hours of labor that the workers have been affected by combinations of capital. Their very opportunities for making a living have been largely circumscribed. Indeed it may almost be said that the very laws of supply

and demand have been set at naught. Let me give you an example. Some years ago the busy little manufacturing city of New Castle, Pa., was aflame with excitement because some of its enterprising citizens had announced the formation of a company for the erection of a plant for the manufacture of wire nails, starting at the raw material and finishing at the nail itself. They built that plant and hundreds of operatives came flocking into the city with their families, and the city grew as if by magic. The plant prospered and so did its employees. Many bought homes on monthly payments and what were once farms became thickly settled sections of the workingmen's district of the town. This success in turn brought in new business houses, and prosperity was seen on every side. Then came the gentlemen's selling agreement between manufacturers of wire nails and a system of allotments of production was made. New Castle mill worked so many days, made so many nails, then shut down so many days while the plant at Salem, Ohio, or somewhere else worked. Thus production was decreased and the prices were maintained. Next came along the big trust and gobbled up the New Castle plant. It was closed down and never a wheel was turned in it again. Some of the machinery was removed, some stood in the mill for years and was then sold for junk. But the men, what of them? Many of them had reached an age when it was too late to learn a new trade, their homes were partly paid for, these they could not leave to go to some other city without losing the payments they had made, and they suffered. Had the New Castle Wire Nail Company remained independent the homes of the workers would have been secure, for with its equipment the nail plant would have been steadily in operation. There was no natural requirement for the closing of the mill. It did not reduce the price of nails, nor did it increase the wages of the men. It did not increase the opportunities for securing labor as a wire nail operator, but, on the contrary, circumscribed them. The trust centralized its plants, increasing its great profits, while the producer of all this wealth received absolutely no benefit. Indeed those who did follow the trust to the scene of its centralized operations were forced to go into the new town sites where their children had few if any opportunities for securing an education. The shell of the immense idle mill at New Castle still stands, a monument to what was and a reminder of what might have been. But that is not all. Before the formation of the great trust there were many small foundries and machine shops which flourished

wherever there was a mill by doing the work of those concerns, but with the inauguration of the trust these small concerns were denied the right of existence because the big trust did and does its repair work in its own shops, and such plants as the Vulcan foundry and machine companies at New Castle, Pa., were driven out of business and their employees had to seek other avenues to earn a livelihood.

Before the organization of modern industrial combinations, the hours of labor were shorter, which in turn gave the workers some time for mind culture, some time to devote to the home and some time for social enjoyment. The physical requirements were not so great. To-day in the iron and steel industries, outside of those plants engaged in the manufacture of sheet and tin plates, the twelve-hour work-day is almost universal. This means practically fourteen hours per day, which gives the worker practically ten hours to devote to his family and public duties, with practically no time for recreation.

The workingman loses his individuality as soon as he enters one of our modern industrial plants. He becomes but an atom in the great aggregate of this industrial system, and his only hope of regaining his social and economic individuality is by uniting with his fellow workmen in a movement through which he will be able to secure a joint bargain with his employer for the labor he has to sell.

THE UNITED STATES STEEL CORPORATION AND LABOR

By JOHN A. FITCH,
"The Survey," New York.

A discussion of the subject "Industrial Combinations and the Wage Earner" with reference to the steel industry, may well take the form of an answer to the inquiry, "Has the formation of the United States Steel Corporation proven a good thing for labor or the reverse?"

The reasons for choosing the United States Steel Corporation are both logical and obvious, I believe. It is the greatest combination in the industry; it has more money to spend on improvements than any other, and so furnishes the most favorable basis for judgment as to the effect of such combinations; and it employs over 200,000 workmen, while its largest competitor employs less than 20,000.

It may be well first to consider briefly who the steel workers are. Not over twenty per cent of the employees in blast furnaces and rolling mills can be regarded as highly skilled. Twenty to twenty-five per cent more may be termed semi-skilled, and the remaining fifty-five to sixty per cent are unskilled laborers. Roughly, the gradations in skill correspond to gradations in nationality. You will not find an Anglo-Saxon among the unskilled; you will hardly find one in ten who is American born. Sixty per cent of them are unnaturalized and a third are unable to speak the English language. The semi-skilled group is made up of both native and foreign born workmen, while of the skilled men sixty per cent are native born Americans.

Within the last twenty-five years the same changes have taken place with respect to nationalities in the steel industry that appear to have occurred in other industries utilizing common labor. Twenty-five years ago, and even more, thirty years ago, unskilled labor positions in the steel industry were filled by Irish immigrants. To-day, the Irish employees that remain are foremen, and the common labor work is done by representatives of the races of southern and southeastern Europe. But even more than ordinarily this shift has taken place in the steel industry, owing to the fact that it is coming to be more and more an industry of machinery and of unskilled men.

There has been great expansion in this industry, and the absolute number of skilled men is much larger than it was even fifteen years ago, but the proportion of skilled men to the whole number employed is much less than in former years and the tendency is for it to become still less as time goes on. Therefore the steel industry has had a great demand in the past for the raw South European immigrants and there is every reason to believe that that demand will be larger as time goes on.

This tendency has more than one result. I have pointed out that to-day sixty per cent of the skilled men are native born Americans. They are also largely of English, Welsh, German and Scandinavian descent. The skilled man of the future will have to be recruited more and more from the later immigration, for they alone are serving the necessary apprenticeship.

Turning now to the discussion of labor conditions, employees in sheet and tin mills work in three shifts of eight hours each. Except for a negligible fraction of one per cent in other mills, the sheet and tin workers are the only ones who have an eight-hour day. Yard laborers in all the mills have a ten-hour day and so do shop men, that is, molders, pattern-makers, machinists, blacksmiths, etc. Tube-mill workers and those engaged in fabricating structural and bridge material have a ten-hour day. In the actual manufacturing processes, however, blast-furnaces, open-hearth and Bessemer departments, and in the rolling of rails, beams and plates, the regular working day is twelve hours. To give some idea of the numbers, the Federal census of 1910 shows that there were 277,913 employees in blast-furnaces, steel works and rolling mills in the whole country in 1909. Fully half of these were twelve-hour men, for about fifty per cent of all employees engaged in manufacturing processes have a twelve-hour day.

Since the beginning of the industry in this country, blast-furnaces have regularly, and open-hearth furnaces have often, been operated seven days a week. To the long working day in these departments, then, there has been added a long working week. This has led further to the introduction of the so-called "long turn." The custom is for the two crews to change about each week, that is, the day crew of one week becomes the night crew of the next, and vice versa. This can be accomplished in only one of two ways. The Saturday night crew may work until Sunday noon and then be relieved by the

day crew, who remain on duty until Monday morning at 6, when the other crew comes back on duty again. That makes an eighteen-hour period for each crew. The more general custom, however, is for the crew that goes to work Sunday morning to remain on duty a full twenty-four hours.

These were the hours of labor that were general in the industry when the United States Steel Corporation was formed. It did not modify them in any material way until 1911. In that year a plan was adopted for allowing one day of rest in seven for each man in the continuous processes. The plan was to increase the force by one-sixth, and to grant one day of rest each week to the members of the crew by rotation through the week. This plan, I am informed, is now being put into operation in the plants of the Steel Corporation. A similar plan is being adopted by some of the independent companies, though not by all.

On the other hand, no change has been made in the daily hours of labor and to-day, as before, fifty per cent or more of the employees of the Steel Corporation in manufacturing processes are working twelve hours per day.

It is difficult to make a statement regarding wages, because the wage schedule of a steel mill is a very complex affair. In 1907 I was given wage figures from the pay rolls of a Steel Corporation mill in the Pittsburgh district. The figures included all of the men in five departments of a steel mill, including every necessary step in the process of turning pig iron into a finished steel product. There were 2,304 men included, and they were grouped according to earnings as follows: 125, or approximately five per cent, received over \$5 a day; 524, or twenty-three per cent, received between \$2.50 and \$5.00,¹ and 1,655, or seventy-two per cent, received \$2.50 a day or less.

In May, 1910, a general wage increase was announced by the Steel Corporation, which was described as averaging six per cent. This must be taken into account in considering these figures. This increase, so far as common labor is concerned, amounted to one cent an hour. The rate in 1908 was 16½ cents an hour in the Pittsburgh district, and it is now 17½ cents. This is the highest rate paid by the Steel Corporation. In its Chicago mills the rate is 17 cents, and

¹Of these 187 received \$2.51 to \$3.00; 258 received \$3.01 to \$4.00, and 79 received \$4.01 to \$5.00 a day. Pitch, *The Steel Workers*, p. 163.

in its Birmingham, Alabama, mills it is 13 to 14 cents. Since unskilled labor represents nearly two-thirds of all the employees in the industry, the earnings of unskilled labor become of more than ordinary importance. In 1892 the common labor rate at Homestead was 14 cents an hour. The raise to $17\frac{1}{2}$ cents as at present is a twenty-five per cent advance. That is somewhere near the rate of the advance in the cost of living, if we are to base our comparison on the Federal Bureau of Labor figures for the wholesale prices of necessities.

But, having given the amount a man earns in an hour, it is the number of hours in a day and the number of days in a year that he works that determines his ability to maintain a proper standard of living. Professor Chapin, in his study made for the Russell Sage Foundation, decided that such a standard could not be maintained in New York City by a family of five persons on an annual income of less than \$800, and that there is no assurance that it can be maintained on an income below \$900. No unskilled steel worker in America can earn even \$800 a year on the rate that is being paid to-day.

Steel workers, to be sure, do not have to live in New York City, but more of them live in Pittsburgh than in any other city of the United States. According to a study made for the English Board of Trade, in 1909, just after the Chapin investigation, on the cost of living in American towns, the average cost of house rents and food in Pittsburgh was found to be the same as that of New York City. But instead of achieving an annual income of \$800 or over, an unskilled workman in the Steel Corporation mills in Pittsburgh, will get exactly \$766.50 if he works 12 hours a day, 7 days a week and 365 days in a year. And the Steel Corporation in general pays higher wages than do its competitors.

I now come to what I shall call the ameliorative efforts of the Steel Corporation—the things regarded by the Corporation as done on the credit side of the account.

First in this list I shall place the campaign for safety. Steel mills are essentially dangerous places in which to work, not only on account of the vast tonnage of metal that is handled in a molten state, but on account of the great amount of complex machinery. The steel industry has an uneviable record of accidents to workmen. In 1907 several subsidiary companies of the United States Steel Corporation decided to adopt better methods of accident prevention. This new move contemplated two important and necessary lines of

activity—installation of safety devices and the inculcation of habits of caution. The plan adopted by the Illinois Steel Company is the one with which I am most familiar. There is in each plant a permanent safety committee of foremen, and there are temporary committees of workmen. The workmen's committees are changed often, and so the interest of many different men is enlisted in the safety campaign. Both sets of committees inspect the plant for safety and meet together to discuss methods of accident prevention. Acting as chairman of these committees there is in each plant a safety engineer whose whole time is taken up with accident prevention. The safety engineer and the assistant general superintendent from each plant constitute a general safety committee of which the attorney of the company is chairman. They meet every two weeks in the general offices of the company for a general discussion of safety matters. Most of the other subsidiary companies have adopted similar measures and there is now a general safety committee for the whole Corporation with headquarters in New York, of which Mr. C. L. Close, formerly head safety man for the National Tube Company, is chairman. This plan, where it has been thoroughly worked out, as in the Illinois Steel Company, the National Tube Company, and the American Steel and Wire Company, has proved a remarkable success. A disinterested observer, who was qualified to judge, has made the statement to me that the South Chicago plant of the Illinois Steel Company is the safest steel plant in the world.

The hospital service of the Steel Corporation is now generally good. The developments of the last three years in this respect have been such as to bring the equipment well within the needs of the plants with which I am familiar. The Carnegie Steel Company especially has made progress along this line, and the new hospital at Gary, designed to serve all the Corporation subsidiaries that are congregated there, is undoubtedly one of the finest hospitals in the United States. Contrary to the custom in many other companies, the men are not required to contribute to the support of the hospitals.

In April, 1910, the Steel Corporation adopted a plan of accident relief. I will quote from the announcement made at that time from Steel Corporation headquarters, in which the plan was summarized:

"Under this plan, relief will be paid for temporary disablement, for permanent injuries, and for death. The relief is greater for married men than for single men, and increases according to the

number of children and the length of service. During temporary disablement single men receive thirty-five per cent of their wages, and married men fifty per cent with an additional five per cent for each child under sixteen and two per cent for each year of service above five years. Following the provisions of all foreign laws and all legislation suggested in this country, there is a period of ten days before payment of relief begins. For permanent injuries, lump sum payments are provided. This is based upon the extent to which each injury interferes with employment, and on the annual earnings of the men injured. In case men are killed in work accidents, their widows and children will receive one and a half years' wages, with an additional ten per cent for each child under sixteen years of age and three per cent for each year of service of the deceased above five years."

This move was made before any compensation legislation had been passed in any state where the Steel Corporation plants are located.

When Andrew Carnegie left the steel business, with the formation of the Steel Corporation in 1901, he established a fund of four million dollars, the income from which was to be used to pension superannuated employees of the Carnegie Steel Company. The American Steel and Wire Company had a pension plan in operation when it became a part of the Corporation. In none of the other subsidiary companies, however, were pension systems in operation. In 1910 it was announced that these funds had been consolidated and the capital was to be increased by the Corporation to twelve million dollars, the income from it to be used to pension superannuated or disabled employees of the Steel Corporation. Since January 1, 1911, pensions have been available under the rules to all employees of the Corporation. In the first year of operation \$281,457 were paid in pensions to 1,717 retired employees.

Older than any of these measures is the so-called profit-sharing plan. This was established in 1903. Employees are given an opportunity to purchase stock in the Corporation at a rate usually below prevailing market quotations. A definite amount of stock is offered each year to employees. The number of shares that any employee may subscribe for is dependent on the amount of his annual income. The lowest class includes all who receive less than a certain fixed amount, which is well above the common labor rate. Those in this

class may subscribe for one share of stock. There are several classes above this class, in which the proportion allotted is progressively increased. Having subscribed for stock, an employee is allowed three years, if he wishes, in which to pay for it, in monthly installments.

Each year for the first five years, \$5.00 per year may be paid as a bonus on each share of stock in addition to the dividend. If an employee leaves the employ of the company for any reason, or if he be unable to complete his payments on the stock, the bonus lapses. It is nevertheless set aside in a fund, and at the end of the five years this fund is divided among the employees then owning stock subscribed for at the beginning of the period, according to the number of shares held. This extra bonus has sometimes amounted to a substantial sum.

I must now refer more particularly to the relations existing between employer and employee.

Going back to the period prior to the formation of the Steel Corporation, we find that in the Pittsburgh district there was a considerable amount of unionism in the steel industry. It is a mistake, however, to assume that the steel industry was ever thoroughly organized. Only one large steel mill of the Pittsburgh district was ever organized to such an extent as to have its influence felt in every department of mill work. Homestead from 1889 to 1892 was so organized that the union influence was felt throughout; although only a comparatively small proportion of the employees in that mill really belonged to the union.

The Carnegie Steel Company had eliminated unionism from its plants in 1892, and of the large plants rolling rails and structural material, the Illinois Steel Company was the only one which came into the corporation in 1901 with union labor.

There was a strike in 1901 soon after the formation of the Steel Corporation, in which the Illinois Steel Company plants became non-union, and the union also suffered the loss of some of the sheet and tin plants. The Amalgamated Association of Iron, Steel and Tin Workers became then a factor in the sheet and tin plants alone.

During the strike of 1901 the executive committee of the Steel Corporation adopted a resolution in opposition to organized labor and declaring that it would not permit the extension of it. After this it apparently adopted a policy looking to the extermination of organized labor. As a result, union labor has now been eliminated

from all of its properties, with the possible exception of its railroads. It has fought The Industrial Workers of the World in its ore mines, the United Mine Workers in the coal mines, the Lake Seamen's Union on the Great Lakes, the Amalgamated Association in its sheet and tin plants, and all the other craft unions which have at different times been a factor, in its shops, and it has won all of its fights.

The present attitude of the Steel Corporation is one of absolute opposition to collective bargaining of any sort. And it has adopted a number of plans that are calculated to prevent an outbreak of organization on the part of its employees.

The pension plan, although a desirable thing in itself, has the effect of keeping men silent who might wish to protest against existing conditions. In order to enjoy its benefits, the men must have served twenty years continuously in the employ of the corporation or of one of its subsidiaries. This effectively prevents any stoppage of work as a protest against anything considered unjust by the workmen, if they would keep their record such as to enable them to draw the pension in old age. The pension rules also specifically set forth the obvious truth that the Corporation does not give up its right to discharge its employees. There is nothing in it to protect a man excepting his subservience to his superior officers, and the nearer he approaches toward twenty years of continuous service, the greater his subservience may conceivably be—for he might be discharged at the end of nineteen years and eleven months and his right to the pension would be forfeited.

The so-called profit-sharing plan also has features designed to keep the employee from standing out vigorously in defense of what he may consider his rights. The rules plainly state that the yearly \$5 bonus for each share of stock, and the additional bonus at the end of each five-year period, are to go, not as a matter of right to each employee who holds stock, but only to those whom the executive officials may consider loyal.

Under these two systems, then, a man will utterly fail of securing the benefits offered if he is offensive to the administrative officials. He may take his choice between exercising his right to register his objections to working conditions or to the labor contract and run the risk of losing his right to the benefits offered, or he may withhold his protests, if he has any, and establish his reputation for loyalty by keeping silent.

That his risk of losing his share in the benefits is a real one is indicated clearly by the attitude of the Corporation toward employees who have at different times made an attempt at collective protest. I have been assured by the executive officials of several of the subsidiary companies of the Steel Corporation that any attempt at the establishment of labor organizations among their employees would be met by the discharge of the men responsible for the movement. The attitude of the companies toward unionism since 1901 has been clearly such as to indicate that this policy has been carried out.

The effect of this attitude of the Corporation tends, in a great many instances, to outweigh anything that it may do in the direction of providing better labor conditions. It is generally true that the employees of the Corporation resent this attitude on the part of their employers, whether they are anxious to go into a union movement or not. They feel that it is a curtailment of their rights and the consequent tendency is to engender a feeling of bitterness.

It may be that if the Corporation goes consistently on with its efforts toward amelioration that it will for a long time be able to maintain peace and a certain degree of contentment in the industry, but a large degree of contentment will certainly not be secured until the Corporation pays higher wages to its unskilled laborers and shortens the working day. Even then contentment will not be widespread or permanent; but with the low wages paid at present and with the long hours, unrest is growing in spite of anything the Steel Corporation has done; and it will continue to grow.

I have indicated, as clearly as I could in the space at my disposal, the policies of the Steel Corporation both good and bad. The effect of such a large aggregation of capital engaged in a single industry, has been, it is very apparent to me, to make it possible for a large amount of money to be spent for improving plant conditions. No competitor of the Steel Corporation has brought about plant conditions as good as those of the United States Steel Corporation. I see no reason for assuming, however, that similar ends cannot be accomplished by smaller companies working together under a voluntary agreement. A workmen's compensation fund could be so established with as great economy, and so could a pension fund, and the latter could be so drawn under such an arrangement as to serve the interests of the workingmen better than does the present Steel Corporation plan. That such a co-operation among companies is

feasible is shown by the proposed compensation and pension fund of the United States Brewers Association, an association of independent brewers.

On the other hand, the formation of the Steel Corporation has not led to an alteration in labor conditions—meaning by labor conditions those things that usually enter into the labor contract—beyond the recent movement for a six-day week. This is of especial importance in view of the enormous power over labor that was secured by the forming of the corporation. In my opinion this is a power so great as to require restrictions and checks in order to safeguard the interests of both the wage earners and the public.

Unionism is a very faulty and often a dangerous form of organization, and though unrestricted unionism is no more dangerous to fundamental rights than unrestricted capital, yet it does not offer any final solution of the problems of labor. But we have so far worked out no better method of establishing justice in industrial matters than leaving it to the bargaining strength of the two parties to the contract. The Steel Corporation, by consciously depriving its employees of their bargaining strength has wrecked this machinery of justice, and nothing has so far been provided to take its place.

My answer, then, to the question, "Has the formation of the Steel Corporation been a good thing for labor?" must be in the negative. Improved plant conditions are not an offset to the loss of individual liberty that has been suffered by the workmen. It is not alone that the corporation is a big one that makes it dangerous, nor is it that its officials do not mean to do well by labor; the evil consists rather in the unrestricted power over large groups of workmen, that lies in the hands of a few men. I do not believe that any small group of men are wise enough, acting solely on their own initiative, to deal with absolute justice with 200,000 men. Without some power representing the workmen, acting as a check on this great power of the Corporation, there can be no real democracy in the steel mill communities.

BENEFICIAL EFFECTS OF INDUSTRIAL COMBINATIONS ON LABOR CONDITIONS

By R. S. WOODWARD, JR.,

Vice-President and General Manager, Standard Roller Bearing Company,
Philadelphia.

The effect of industrial combinations on labor conditions is a subject which cannot be treated mathematically. There is involved so much human nature and personal judgment that no conclusions can be reached which are positive and without exception. It is practically impossible for the general public to reach an accurate and fair minded decision on these matters if based on published fragmentary statements and sensational mis-statements. The conclusions which I am about to state are based on ten years' experience in the operation of factories and mills in several different industries and in several different parts of the country.

In discussing the effect of industrial combinations on labor conditions, let us first classify these effects as direct and indirect and then state several definitions so that we will be clearly talking and thinking along the same lines.

Industrial combination means the combining under one ownership and one operating organization of several (previously) separately owned and separately operated units of manufacture or production. It is best likened to the combining under one general of the artillery, cavalry, and infantry of several armies which have been operating independently in several different localities. An industrial organization is markedly similar to an army organization. The military organization, however, has the great advantage that discipline may be enforced and treason punished. I do not urge that in the industrial organization men should be injured or deprived of the right to protest at the dictates of those in command. I do believe, however, that it is a menace to everybody, to allow self-appointed leaders to rise up and by threats and mis-statements lead men into disorganization.

Labor conditions mean conditions under which men labor or work. The conditions under which men live and pursue happiness

form another phase of the subject. The former, or direct, is the set of conditions under which he gets his money; the latter, or indirect, is the set of conditions under which he spends his money.

Labor we will define as the men who work almost entirely with their muscular energy at wages ranging from fifteen cents per hour to about forty cents per hour. The lower the wage, the less the mental effort which accompanies the muscular effort. The man at forty cents per hour does very little sustained mental work except the more or less unconscious thinking which controls his muscular movements. We speak of him as trained.

Industrial combination might be expressed as factory combination, and we will therefore look to the factory for the conditions of labor. Let us take the small factory, probably owned or operated by a single man or a small group of men. In this group of small factories we will find the one which is ideal, the one which is mediocre, and the one which is execrable. In the remaining group of large factories we will find the one which is ideal and the one which is mediocre, but not the one which is execrable. The reason is clear. The large factory is modern. Modern means ideal or mediocre, depending on the men who build it.

This line of thought then leads to the inevitable conclusion that, in general, the large factory is nearer ideal than the smaller one, and hence that the labor conditions in the large factory are better than in the small one. Now, since industrial combination is almost sure to result in the combining of several small plants into one large one. we therefore reach the conclusion that industrial combination improves labor conditions.

We have reached our conclusion by what some may term a mere line of logical argument. Let us define the basis of the conclusion in detail. What are the conditions of labor? They are

1. Wages.
2. Sanitary conditions.
3. Protection from dangerous machines.
4. Protection from fire.
5. Protection from building failure.
6. Co-employment of physical and mental weaklings and degenerates.
7. Honesty and fairness of the management.
8. Proper adjustment of the rate of work.

Almost without exception, the factory of the combination will exhibit these qualifications of improved labor conditions to a much greater degree than will the factory of the small independent operator. Nor is the improvement of conditions yet completed. So long as science leads the way, there will be continued improvement. With the leaders it will be voluntary, with the laggards it will be forced by the laws of the state.

Before passing to the indirect effects of combination, I would say a word to those who agree with these conclusions on all the points except that of wages. There are those who think that a combination, having gained a virtual control of an industry, will lower or prevent the increase of wages. I have heard it urged that because a single company controlled most of the factories making a given product, that the specially trained workers could only gain a living at that particular work and would have to accept the wages offered by the combination. With all respect for the holders of such an opinion, I would say that in my experience it has always worked out the other way. Nobody is forced to work at a given calling; nobody is forced to sell his product at a given cost; how much simpler, easier and cheaper for the combination in this position to raise the selling price than to lower wages and disrupt the organization.

Raising the selling price is the stepping stone to the consideration of the indirect effects of combinations on labor conditions. We now begin to consider the subject of how a man spends his money in living and the pursuit of happiness.

The firm foundation on which industrial combination rests is the reduction of the cost of production. The next and inevitable step is reduction of selling price; inevitable, because if the price is not reduced, competition and destructive price cutting will arise. If the selling price is reduced, then the effect of combinations on indirect labor conditions is that the buyer gets more or better for the same money. Here again, it will be urged, we reach a conclusion by a process of reasoning. There are some who will say that the conclusion is at variance with the facts. Let us cite an example. Few of us remember the quality or cost of a gallon of oil when the oil combination was started. Did you watch the cost come down and the quality improve as this combination progressed, and did you watch the increase in the wages of those employed in its production? This

is all a matter of record. Again, now that this combination is dissolved into thirty independent companies, have you watched the price of oil go up?

It is unfortunate for our social equilibrium that during the past twenty-five years—the period of great industrial combinations—there has appeared a new and elusive factor that has tended to nullify or hide the true facts concerning the effects of industrial combinations. This new factor is compound. It has appeared almost suddenly, coincident with industrial combination. Increase in the production and free coinage of gold is the first part, and increase in demand, or population, is the second part. The mere increase in the production of gold is bad enough—it makes a dollar worth less. It realizes to a degree what you feared from the free coinage of silver, not so many years ago; but, added to this decreased purchasing power of a dollar, comes a greater demand for everything, which of itself would raise the buying price. Had industrial combination occurred with a decreasing gold production and a stationary demand, we would hail the combination as the great reducer of the cost of living. Industrial combination has proceeded in spite of the effects of these two most potent world-wide forces being used against it.

The world-wide labor strikes of to-day, and the undercurrent of dissatisfaction with all existing conditions, whatever they may be, are due very largely to one thing, namely, the great increase in the production of gold. It is clear that if enough gold were produced and coined into money, so that gold dollars were as common as grains of sand, it would take a great many dollars to purchase a loaf of bread. There has already been produced enough gold to seriously disturb the former balance between wages and the cost of living. So long as the production of gold continues to increase at a greater rate than the increase in population, we will continually have labor and salaried workers rightfully asking for increased wages. This condition of struggle and lack of balance can only be restored and held stable by international agreement limiting the production of gold, or by adopting a new composite and constant standard of value.

In every group of a hundred men or combinations there will be found two more or less dishonest ones. So long as human nature remains as it is these two will temporarily damage and embarrass us according to their ability. In spite of them, however, industrial

combination has had and will continue to have a beneficial effect on labor conditions, both directly and indirectly. It makes better wages, better working conditions and better living conditions.

In closing, permit me to leave one thought with you. Industrial combination is in accord with the natural laws; neither you nor I can amend or repeal the laws of nature.

BIG BUSINESS AND LABOR

By JAMES T. McCLEARY,

Secretary, American Iron and Steel Institute, New York.

The subject for this forenoon may be broadly entitled "Big Business and Labor." The topic having already been treated quite fully in detail as to one line of business, perhaps I can best make my modest contribution to the discussion by taking a general view. I shall try to look at the matter with the eyes of an earnest man who must earn his bread by the sweat of his brow. This should not prove a hard task for me, because work has been the experience of my life.

The Wage-earner's Natural Desires

The things desired by me as a workingman may be grouped into two classes: First, the things desired now; second, those desired for the future.

What I desire first of all is employment, the chance to earn an honest living. That is the fundamental thing, compared with which all other considerations in this line are of minor importance. No one can fully understand the value of having employment who has not been under the necessity of walking the streets looking for work. Employment having been secured, the question of compensation assumes larger importance. Later on, as I become accustomed to having work at fair wages, the question of working hours may arise. Still later, I may come to attach importance to working conditions, whether they are safe or unsafe, healthful or unhealthful. I may inquire what provisions are made for the prevention of accidents, and how much of the inherent risk of the employment I should as a workingman assume.

Looking to the future, what do I naturally desire? My prime desire for the future is steadiness of employment, that I have opportunity to work as many months in the year as possible. Closely related comes the question of permanency. How many years can I count on having employment in this line? Can I count on finding in it a life-work, and prepare myself accordingly? How far does

the employment offer opportunity for promotion, for getting on in the world? What chance will there be for me to become a partner? What provision for old age does the employment promise?

To me as a workingman which offers the more satisfactory answers to these vital questions, big business or little business? I cannot afford to make any mistake about this matter.

Big Business Enlarges Opportunity for Employment

First, as to my chance of employment: What I as a workingman offer in the market is the most perishable of all commodities. If a man desiring to sell his farm cannot find a buyer to-day, he may find one next month or next year. Meantime the property may actually increase in value. The goods that a merchant does not sell to-day, he may hope to dispose of to-morrow or next week. But the man who goes forth in the morning with a day's work for sale must sell it that day or the coming of sunset finds it lost wholly and forever. So to me as a workingman the first imperative need is employment. Which offers me the better chance for securing employment, big business or little business?

Let us look first at the great field of transportation. Up to about a hundred years ago all the centuries had failed to develop any means of transportation aside from animal power of some kind, except the uncertain use of wind-power on some waters. It is only about eighty years, within the lifetime of many men still among us, since the railway came into being. Prior to the railway the acme of land transportation was the stage-coach. That was the day of small things. The coming of the railway was practically the beginning of big business. How has its coming affected the opportunity for getting employment in transportation?

It is part of the law of progress that the superior shall displace the inferior. So the first effect of the railway was to drive out of business the stage-coach and the wayside inn, with all that they implied in the line of employment. Since 1800, when railroading began, the population of the United States has increased sevenfold. But during that period the number of our people employed in transportation has increased more than a hundredfold. In other words, in the field of transportation the coming of big business in this country has multiplied each man's chance for employment by more than twelve.

How about other crafts? When the spinning of yarn and the weaving of cloth were done by hand, few people were able to find regular money-making employment in those trades. Such inventions as the spinning-jenny and the power-loom vastly increased each person's chance for getting employment in making cloth. The invention of the sewing machine has largely increased, compared with the increase in population, the number of persons regularly employed in making wearing apparel. The making of garments has become big business in large part, and in that part affords to each person more opportunity for work than was offered in the days of little business in this line or is afforded now in that part of the garment-making field occupied by little business. The invention of the telegraph and that of the telephone have not only increased very greatly the chance for work in transmitting messages but have practically opened an entirely new field of employment. Both are chiefly operated as big business. The improvements in paper-making, in typesetting and in printing generally have resulted in big business in nearly all these fields and at the same time have vastly increased the number of persons employed in paper and printing industries.

Except the telegraph and the telephone, these improvements and others that seemed to compete with existing methods, were all opposed by wage-earners at the time of their introduction on the ground that they would rob people of employment. On that ground the early machines were destroyed by those whose earnings seemed to be threatened. They honestly thought that "labor-saving machinery" meant the employment of fewer workers. But it is coming to be understood that, while improved methods of production do at first reduce employment in specific cases, their ultimate effect is to increase employment.

The Mother of Employment is Efficiency

And the reason for this seeming paradox is coming to be understood. It is that by scientifically reducing the cost of products the good things of life are brought within the reach of many more people, the market for them is thus greatly enlarged, and the vastly increased volume of consumption in turn increases the demand for labor. In the stage-coach days a journey of a hundred miles was an event, one that came to the average person hardly once a year.

Indeed, to most people it never came. To-day a trip of a thousand miles is simply an ordinary matter, and people encircle the earth for a vacation. For every person who in the old days traveled a hundred miles, scores now travel a thousand. For every person who in the old days of handweaving and handsewing got one new suit or dress a year, a hundred now get two or more new suits or dresses a year. For every person who in the old days took in all one weekly paper, hundreds now take dailies and weeklies and monthlies; and the number of books in the average home has increased enormously.

The average man of to-day can command comforts and conveniences that were beyond the reach of kings even a century ago. How have the good things of life been brought within the reach of so many of our people? Primarily by increased efficiency in production and distribution. This efficiency has been secured in large part by utilizing more and more the forces of nature and by production on a large scale, thus making it possible to reduce very greatly the necessary margin of profit on each item.

Pardon me if I emphasize this. My experience has shown me the need for such emphasis. During my service in Congress I was for ten years on the Committee on Labor. I thus became acquainted with most of the national leaders of labor organizations, for some of whom I learned to have a high regard. In many of the statements made to the committee in the name of labor there seemed to be one oft-repeated error. It was rarely if ever put into words, but it was the unspoken major premise of many an attempted syllogism, the unstated basis of many an appeal. If it had been put into words, the statement would have run something like this: "There is just so much work to be done; the less of it each worker does, the more workers will have to be employed." The doctrine was that inefficiency is the mother of employment. To me that seems a very serious fundamental error. And in my judgment any plan for the betterment of the condition of workingmen that is based on such an error is foredoomed to failure. The only way in which a mother can give each of her sons more pie is to make a bigger pie or more pies. There must be more to divide before it becomes possible for each one to get a larger share.

Efficiency helps to enlarge employment. Big business promotes efficiency. So big business helps to enlarge employment.

Big Business Improves Labor Conditions

Returning now to my theme, it seems clear that as to opportunity for employment big business offers me as a workingman more chance than does little business. How about the next item, wages? Let us again begin our investigation with transportation. How do the wages earned to-day by engineers and firemen, by conductors and brakemen, by train dispatchers and station men, by railway employees generally, compare with those that were earned in the transportation field in the days of small things, the days of the stage-coach? Ask any elderly man who has personal knowledge of conditions then, and he will tell you that the lowest wages now paid by the railroads are higher than the highest that were paid to transportation men in the stage-coach days. Not only are the railway employees paid more dollars per week than were paid to the corresponding employees on or about stage-coaches, but as to most things each dollar will buy more now than it would buy then. And to-day, where are the highest salaries and wages paid? Are they not paid by the larger companies? As is admitted even by critics of the United States Steel Corporation, wages in the steel industry have increased twenty-five per cent since the organization of that company. On the score of wages, then, big business seems to promise me more than does little business.

How about hours of labor? Of course the men who get to the front are not clock-watchers. No man ever achieved great results on an eight-hour day. And yet it is natural and right for employees to desire regular and reasonable working hours. As a rule the man in any business who puts in the longest hours is the man at the head of it, and the nearer one is to the boss the longer his hours are likely to be. Take the farmer. In the busy seasons his hours are often "from sun to sun," or longer. And the fewer men he employs the longer their work hours are likely to be. Only on a big farm, where the work can be systematized and certain men can be assigned to "the chores," can the hours of labor be made regular and not too long. In the sweatshop the daily hours of work are measured only by human endurance; in the big clothing factories the hours are shorter and more regular. The more I examine into the matter the clearer it becomes to me that big business offers me as a workingman more reasonable hours than does little business.

The other working conditions, those relating to healthfulness

and safety, have already been so fully discussed to-day that I shall merely refer to them very briefly. To render conditions of labor healthful and safe costs money. Only companies of considerable capital can afford to make such provisions for health and safety as every right-minded employer would like to have. And it is only when plants attain considerable size that it becomes practicable to assign one or more capable persons to the special duty of looking after such conditions of work. Moreover, public opinion is a great regulator. But the general public takes little interest in small plants, while on big ones is turned the searchlight of publicity. Conduct which in small companies does not even cause comment is severely criticized and condemned in large companies. The larger the company the more care it must exercise to avoid unfair criticism. And last but not least is the disposition of the men at the head of big companies. Most men would rather be kind than unkind. But in the severe struggle of life men often feel under the necessity of being more harsh than they really wish to be. The men at the head of big business are sufficiently far removed personally from the temptation to harshness, and yet can remember the severity of the average man's struggle, that they have both the disposition and the ability to be especially considerate of their less successful brethren. One of the real difficulties met by these men is that of knowing what is actually being done or left undone by their subordinates. But that problem, too, is being solved.

Evidence in Confirmation

Mr. Bolling has given us a brief but vivid account of the really admirable work along these lines that is being done at the expense of much thought and millions of money by the United States Steel Corporation. Confirmatory of Mr. Bolling's statement is the testimony of the head of one of the large independents which compete in the market with the Corporation. This testimony was given last winter at a hearing conducted by the Committee on Finance of the United States Senate. As is generally known, the United States Steel Corporation makes about half of the iron and steel produced in this country. The other half is made by independent companies. A dozen or more of these independents are themselves very large, several of them employing more than 10,000 men. Among the large competitors of the United States Steel Corporation is the Republic

Iron and Steel Company, with plants in seven states, of which Mr. John A. Topping is the head. Testifying on February 17 last before the Senate Committee on Finance, Mr. Topping said:

The United States Steel Corporation, as is well known, are the greatest producers of iron and steel in the world. As a competitor of that company I want to say that they have done more to uplift labor and create better living conditions, and they have stood more strongly for the maintenance of wages, than any other producer of iron and steel. Perhaps one reason for it has been that they have had the ability to do it. They have had the earning power that permitted it. The smaller companies—the so-called independent companies—have had to meet that competition. As a result, since 1900, I ascribe the increase in wages more largely to the efforts of the Steel Corporation than to the natural conditions of supply and demand of labor.

How about accidents? How much of the inherent risk of my employment must I as a workingman assume? Only in recent years has this question been seriously asked. Through all the centuries of small-scale business it was held that each workingman must personally bear the risks of the trade in which he earned his living. And this was the reasonable view. Otherwise, one serious accident might bankrupt the firm or company. It then seemed necessary in the general interest, including that of the employees themselves, that the employer should be free from liability for accidents except in cases where the fault was clearly his. Only with the coming of big business, extending over large areas so that an accident would usually be small in financial results compared with the strength of the company, could the policy be adopted of placing on the business itself, as one of the costs of production, the inherent risks of the industry. As to accidents, then, both as to their prevention through safety devices and as to their compensation in case they occur, big business is clearly better for me as a workingman than little business.

Big Business Promotes Steadiness of Employment

And now, which holds out to me more promise for the future?

How about steadiness of employment? I have learned that alternate chills and fever undermine health. I do not crave a life of alternate feast and famine. As I figure the matter, it is better for me to earn \$1,000 a year working fifty weeks and having two weeks of vacation than to earn \$1,200 a year working twenty weeks

and having thirty-two weeks of vacation. In the one case I get about twenty dollars a week. By living sensibly I can keep within my income and even save a part of it. In the other case I would be getting \$60 a week while at work. I would probably feel rich and act rich. I understand human nature well enough to know that during the income period I would probably key my expenditures to at least a \$30-to-\$40-a-week rate. Even at this seemingly moderate rate my income would not see me through the year. To every person idle time brings special temptations. It is for idle hands that "Satan finds some mischief still." Holidays are proverbially hard on savings. So I have soberly concluded that on the whole for me as a workingman steadiness of employment is even more important than rate of wages.

Which offers me more promise of steady employment, big business or little business?

Little business is necessarily local in its operation and seasonal in its demands. This week there may be a rush of orders; then may come a long period of slackness in demand. Big business, on the other hand, usually covers in its operations a large area with its varying needs, and thus has better opportunity than little business to secure continuity of demand. And in case of temporarily slackened demand, big business can afford better than little business to pile up goods for future requirements. Thus, with broad vision and an extensive field of operations, backed by large capital, big business can more effectively than little business equalize its volume of production during the year and can thus render employment more steady. Of course no company or corporation, big or little, can guarantee steady employment to every one on its rolls; but it seems clear that employment is more likely to be steady in big business than in little business.

How about permanence of employment? Writing to one of the New York papers recently, an intelligent workingman put it this way:

I have seen the evil of the old ways, when a house doing well to-day was confronted on the next day by a rival slashing prices, a trade war following and resulting in the survival only of the strongest. For us wage-earners what was the outcome? Thrown out of employment, compelled to seek new jobs, with all the accompanying suffering till the new jobs were obtained. Even if we got work with the surviving house, a reduction in wages usually resulted. Under present conditions we at least go home nights with the certainty of constant, steady work ahead and the certainty of wages being paid.

The experience of this man is borne out by the commercial reports of both Dun and Bradstreet, standard authorities of world-wide reputation, which show that about ninety-five per cent of the commercial failures in the United States year by year occur in small business. And common observation confirms all this, as well as the conclusion based upon it. In thinking over the people of our acquaintance who have for years had continuous employment, we recall that nearly all of them are employed in big business of some kind.

Big Business Affords More Opportunity for Promotion

But it is often asserted that big business is closing on young men the door of opportunity. My judgment as an observing wage-earner is that such an assertion is contrary to reason and disproved by experience. The very permanence of employment afforded by big business gives opportunity to devote time and money to fitting oneself for larger usefulness and greater responsibilities. And the magnitude of the possible rewards is an incentive to ambition. What does experience show? Take the men in high positions in big business—in manufacturing, in railroading, in banking, in merchandising, or in any other line—what is their history? Nineteen out of twenty of them rose from the ranks.

But is the way still open? Never so wide open as now. Looking back over my boyhood days, I see each business owned by the man at the head of it. In most cases this man had founded it, and one of his most cherished ambitions was to transmit the business to his descendants, so that generation after generation it should bear the family name. This was a most praiseworthy ambition, and the working out of it often resulted in great good. But with the owner so minded, what chance had any boy outside of the owner's family to get to the head of that business? Little, unless the sons turned out badly, an undesirable thing. And new establishments could then be started with less capital, perhaps, than now. But, as we have seen, it is in just such small enterprises that most of the failures come.

There are twenty times as many chances for a man to reach a commanding place in the community, with an annual income of \$5,000 to \$50,000 or more, now than there were in my boyhood. Why is this? The funds to operate big business are gathered from

thousands of sources. The men at the head of large enterprises are not the sole owners but are trustees for the owners. To attain such positions of trust they must command confidence. To maintain their standing they must show results. Unquestioned character and demonstrated capacity are their keys to the doors of progress and promotion. The head of a big business, with his great responsibilities, would hesitate to place even his own son in one of its important positions until the young man had given evidence of fitness for the work. Favor counts for less and merit counts for more in business now than ever before. This has been brought about by big business. So for me as a workingman, ambitious to rise on my own merits, big business offers better opportunity and more of it than does little business.

Ownership in Big Business Easier to Get and Safer to Have

But in days gone by young men did sometimes become partners. Certainly, and so they do to-day and more frequently. In the old days a partnership depended largely on the will of the owner. The employee had little voice in the matter. And this was right. Partnership is at best a very dangerous method of combining capital. In partnership each partner has full authority to act for and bind the firm. Conversely, each member of the firm is responsible for all the debts of the firm. With the best of intentions one's partner may make a mistake which will not only cause the loss of all that one has invested in the business but may also wipe out all of one's other property. But the ownership in corporations is divided up into shares so small—usually \$100 each—and the shares of the large corporations are on sale every day, that any employee can become a part owner in even the largest company to the extent of his desires and ability. And this he can do much more safely than in a partnership. He takes no risk beyond his investment. And as the newspapers show day by day the market value of the stocks, he can sell his stock or buy more whenever he wishes to do so. Many large corporations offer to their employees special opportunities for becoming owners of their stock. So that as a workingman I can to-day become one of the owners in big business more easily and more safely than I could or can in little business.

And now, finally, how about provision for the time when I can no longer work? Fear of want in old age is the nightmare of per-

haps the majority of civilized men. To lay by a competency for the evening of life prompts much of human effort. The love of money is no doubt the root of much evil, but usually that applies to money sought for present gratification. The desire to provide for old age is the root of much of the honorable effort of life, and lies at the base of much practical virtue. Which offers me better opportunity for peace of mind about old age, big business or little business? The answer is obvious. All that has thus far been said indicates what that answer must be. But in addition to all that, many companies make definite provision for the retirement of employees who have rendered long and faithful service on a pension that shall secure them from anxiety about income during their declining years. But such provisions are being made only by large corporations, and in the nature of the case cannot be made by any other.

So that, after calmly surveying the field, it seems clear that both for the present and for the future big business offers me more as a workingman than does little business.

Good Works are the Children of Faith

Of course nothing human is perfect. This is earth, not heaven. But we have it on good authority that even in heaven it was possible for an unscrupulous self-seeker to mislead quite a number of angels by alluring promises of impossible things. The result is well known. Mere fault-finding is one of the easiest things in the world. It requires little but a disposition. It is said that a farmer on being congratulated on the fine crop prospects answered, "Yes, there will probably be a bumper crop; but big crops are hard on the land." Honest intelligent, and pertinent criticism should be welcomed. But usually the men whose criticisms would be most valuable are the slowest to offer them. Knowing the difficulties of achievement, they are likely to be modest about offering suggestions. "In the bright lexicon of youth there is no such word as fail." But age knows better. To the inexperienced all things are possible and most things are easy. Experience tells a different story.

The poisoning of wells is no longer regarded as right even in war. But is it not a worse crime against a person even than poisoning his body, to poison his mind? And what shall be thought of those who deliberately poison the minds of their friends? Sometimes, under the guise of friendship for workingmen, suggestions of

evil are made without just cause, suggestions that really do wage-earners mental and spiritual harm. Suspicion is easily aroused, especially against those more fortunate than ourselves. All of us need to watch carefully lest we break the tenth commandment. Sad to say, those who are disposed to be distrustful can often find grounds for suspicion. But as I move around among my fellowmen the daily wonder to me is not that some occasionally do wrong but that under many and strong temptations so many people live upright lives. One of the most powerful of sustaining influences in life is the confidence reposed in us. It is only the person who believes in you who can bring out all that is best in you. It is because your mother never lost faith in you that her influence with you for good has been so great. It is faith, not doubt, that moves the world to better things. Those who needlessly or recklessly break down mutual trust among men are public enemies of the worst type.

When the sensible workingman is told that the provisions being made by large corporations for pensions and such things are intended to enslave him, he answers, "Freedom and slavery are very elastic terms. Before I got married I was entirely free to do many things that I cannot properly do now. But I regard the joys of family life, with all its sacred associations, as worth far more to me than the freedom that I cheerfully relinquished. When I bought the house in which I live I was able to make only a small cash payment. For years thereafter I was not at liberty to spend otherwise the money needed to make the remaining payments as they came due. My wife and I denied ourselves many things that we would have been glad to buy. But we were happy thus to curtail our liberty, if you wish to call it so, because we found joy in the thought of making a home for the babies. In every relation of life men voluntarily deny themselves certain liberties in order to attain results that they prize more. That is not slavery; it is freedom to choose what one prefers. As a workingman I know that faithful, long-continued service is of value to the company, something for which it can afford to pay. On the other hand, I know that unfaithfulness, disloyalty, undependableness are worse than worthless. If any one tells me that my employers are selfish, I answer, 'Of course they are. And so am I. But that does not prevent either of us from having sense enough to deal fairly by the other.'"

The American Iron and Steel Institute

I am pleased to note that several members of the American Iron and Steel Institute, all men of large affairs, are showing their personal interest in these problems by their presence here to-day. And speaking now as the Secretary of the Institute, I may say that one of the prime purposes of these men in establishing it was to give candid and careful consideration to questions relating to the welfare of the men working in mines and mills, and to secure co-operation among the producers of iron and steel in the solution of these problems. Already the seven-day week and the long shift, which had always prevailed in such operations as are necessarily continuous, have been practically eliminated in the plants of the larger companies, and much has been done in the solution of other problems, including that of hours of labor. Along these lines the men composing the Institute are trying to do more and better and sooner than legislation could reasonably require in industries generally.

In these problems there are more difficulties than outsiders realize. It is not easy to determine what is desirable to do. Then comes the problem of how much of it can be done, and how best to do it. Business is carried on primarily for profit. Men handling other people's property are in honor bound to treat it as a trust. Philanthropy is a personal matter to be paid for by oneself. Directors cannot properly act as philanthropists at the expense of their stockholders. Nor do self-respecting employees wish anything resembling charity. But, as a means of promoting efficiency and loyalty, thus securing more profit to both employer and employed, directors may with clear consciences spend company money to secure healthfulness and safety in working conditions and to provide against disabilities resulting from accidents and old age. And my experience is that in cases of doubt directors are glad to see a way to do properly the generous things that their hearts dictate and their judgments approve.

Perfection has not been reached, of course, but the movement is strongly in the right direction. The saying, "Corporations have no souls," was born when corporations were all small. It is coming to be understood that the bigger the corporation the more soul it must have. Never before in the history of the world has so much intelligent thought been given to the just and humane conduct of business as now. And big business is leading the way.

THE UNITED STATES STEEL CORPORATION AND LABOR CONDITIONS

BY RAYNAL C. BOLLING,

Assistant General Solicitor, United States Steel Corporation, New York.

More important than any other fact concerning conditions among workmen is the attitude of their employer in regard to those conditions. At the very outset I wish to make clear the attitude toward their workmen which exists among the officers of the United States Steel Corporation and its subsidiary companies. They are not indifferent or self-satisfied as to conditions among their workmen. They are trying to improve those conditions as fast as it is practicable to do so. They do not maintain that the lot of the steelworker is easy or ideal; but they do maintain that their workmen are treated as well on the whole as the workmen in any other industry and treated far better than ever before in the steel industry. It is on the rate of improvement that your verdict should be given, rather than upon the mere existence of any particular conditions.

In the service of the United States Steel Corporation we do not resent criticism. On the contrary, we give it earnest consideration and try to profit by it when it seems to be deserved. But I ask our critics to consider and all of you to remember that the ten years since the creation of the United States Steel Corporation have brought greater improvement in the conditions of its workmen than any twenty years in the previous history of the steel industry. Do not forget that bread which is baked too fast comes out of the oven burned on the outside and dough in the middle.

Rightly enough, you will ask proof of the sincerity of our endeavors to improve working conditions as fast as is practicable. There is no better proof than our budget. The business corporation which takes millions of dollars each year and spends the money for the benefit of its workmen before it takes any profits, is entitled to public belief in the sincerity of its endeavors. The United States Steel Corporation is spending each year for the betterment of conditions among its workmen approximately \$5,000,000 which would otherwise be applicable to dividends. Before it is subjected to un-

friendly criticism, does not fairness demand an inquiry as to how many other employers are spending as much either in proportion to the size of their business or to the number of their workmen? I hope presently to give you some description and details of this expenditure, of which the items are as follows:

ANNUAL EXPENDITURES OF UNITED STATES STEEL CORPORATION FOR
IMPROVING CONDITIONS AMONG ITS WORKMEN

Relief for men injured and the families of men killed, which is paid in all cases regardless of legal liability, costs each year, approximately	\$2,000,000.00
Accident prevention, in which we have probably the most effective system in the United States, costs each year, approximately	750,000.00
Sanitation and welfare work of all sorts, which we are now developing, costs already each year, approximately	1,250,000.00
The Pension Fund, which provides support for superannuated employees, requires each year:	
(a) For pension payments, approximately	200,000.00
(b) For the creation of a permanent fund to be completed in thirteen years	500,000.00
Annual expenditure for these purposes	\$4,700,000.00

As there are other items of expenditure for improving labor conditions not included here, it is safe to say that the total annual expenditure is not less than \$5,000,000.

So much for the cost of creating and maintaining better conditions of labor. Now what about the character of this work done by the United States Steel Corporation? I will describe it briefly under separate headings.

Employees' Stock Subscription Plan

The United States Steel Corporation has made it possible for every employee, even down to the ordinary laborer, to become an owner of its stock. In its iron mines, a thousand feet underground, I have seen men working with pick and shovel who proved, when questioned, to be stockholders in the company. Over 30,000 of the workmen are thus interested in the business. These employee stockholders derive the following special benefits from the plan: (1) They are induced to save money, often for the first time in their lives. Many a thrifty workman with a snug sum laid by will tell you that he began by putting a few dollars each month into the stock

of the corporation which employs him. (2) For five years they receive a very high return upon their investment, and thereafter a large return for such small investments. (3) They are induced to feel a direct interest in the business and to remember that their own interests are tied up with those of the company. (4) They are encouraged to remain with the company and to profit by permanent employment.

Accident Relief

Before there was any law in this country which required anything of the kind, the United States Steel Corporation established a system of voluntary accident relief absolutely regardless of legal liability. Every man injured and the family of every man killed is taken care of without need of lawsuits or even of any claims against the companies. Last year we were sued in only two-tenths of one per cent of the cases—showing how satisfactory this plan has proved to our workmen. This provision for our injured men and their families costs us each year over \$2,000,000. I believe the acceptance and application of this new principle with respect to work accidents among the 200,000 employees of the United States Steel Corporation have done much to bring about the change in our laws. The adoption of workmen's compensation laws in place of an outworn system of liability based upon negligence is one of the greatest advances in our generation. Foremost in this advance, demonstrating the practicability of the change, was the United States Steel Corporation. Its plan of voluntary accident relief regardless of fault was put into effect before any workmen's compensation act and did more than will ever be known to advance this great and beneficial change.

Accident Prevention

The United States Steel Corporation has spent six years in the development of a system of preventing accidents which I confidently believe is not surpassed anywhere in the United States or abroad. With the experience of its subsidiary companies extending over many years and based upon the largest number of employees in any one concern in the country, the Steel Corporation set about the reduction of accidents to its workmen. The system which has been worked out comprehends all manner of safety devices and other material safeguards, but, above all, it is based upon the development of an

earnest, constant and determined effort to prevent work accidents—all the way from the president down to the lowest workman. Everywhere there has been taught and emphasized the motto, "Safety First," which is the watchword of this campaign among superintendents, foremen and workmen.

A disinterested observer qualified to judge has declared that the South Chicago plant of one of our companies is the safest steel mill in the world, and, upon equally good authority, I am informed that our results in accident prevention are better than those in Germany, which has long been the leader and example in these matters.

In six years the number of serious and fatal accidents among workmen of the United States Steel Corporation has been reduced forty-three per cent, and more than 2,000 men each year are saved from injury or death in work accidents which would have happened to them under old conditions.

This campaign for safety in its mills has cost the Steel Corporation about \$2,500,000, and is now costing \$750,000 more each year. The amount of time, thought and effort which have been given to this work is beyond computation.

Surgical and Hospital Arrangements

At all our mills, mines and plants provision is made for the best surgical and hospital treatment obtainable for employees injured in our work. In the mining regions the arrangements include medical attention for the men and for their families. From time to time prominent surgeons and physicians not connected with our companies are employed to inspect our hospitals and surgical arrangements under instructions to criticise with absolute freedom and to recommend any changes or improvements they may deem advisable.

Pensions

By an arrangement under which \$8,000,000 is being added to the \$4,000,000 originally given by Mr. Andrew Carnegie, there has been provided a permanent fund of \$12,000,000, from the income of which all superannuated employees of the United States Steel Corporation who have remained twenty years in its service are assured support for the rest of their lives. The smallest pension given is \$12 a month and the largest \$100—thus the lowest paid workman will receive enough to provide for his necessities and the high-salaried employees

do not become a drain on the fund. Already more than 1,600 old employees are finishing their lives free from anxiety and want through the benefits of this plan, and each month brings many additions to the number. The annual cost of provision for this permanent fund and the payment of pensions is upwards of \$700,000.

Sanitation and Welfare

The most recently organized work for improving conditions among employees of the Steel Corporation is in sanitation and welfare. This work is being organized in the same manner in which the system of accident prevention has been worked out and with the same theory of bringing these matters home to the heads of departments, superintendents and foremen, and above all, to the men themselves. In these matters especially must the workmen be enlisted. Without their participation all such efforts are merely lifting on boot straps.

Although this work is only in process of organization and development its cost last year has already amounted to \$1,250,000. Time does not permit me to do more than mention some of the ways in which this campaign for better sanitation and welfare was carried on and this great sum of money was spent.

Sanitary disposal of sewage and fecal matter is perhaps the most obvious and imperative question in any work of this kind. In one of our subsidiary companies alone \$100,000 was spent in this sort of work last year.

Provision for pure water in all plants and houses which belong to our companies is an important and expensive matter. A system of purified and cooled water for one plant cost \$4,000.

Drainage of stagnant water, prevention of flies, cutting weeds, collecting garbage, fencing and painting and enforcing cleanliness and order generally are among the demands of this work.

Food supplies, especially milk and meat, must be protected from contamination wherever our companies have any responsibility for providing such supplies.

The installation of wash-rooms, shower-baths and lockers for a change of clothing has cost large sums. One swimming pool has been built and we hope more will follow.

One of our companies is establishing at each of its mills in crowded districts playgrounds for the children of its workmen.

Another company at one of its plants has provided land, furnished seeds, and given prizes for the making of gardens by its workmen. This idea has been so successful that the land allotted to this use now looks like a well-kept market garden.

All our companies are donors to hospitals, churches, clubs, libraries and other organizations established by the communities and the workmen. It is the aim of our managers to make their plants a benefit to the communities in many ways additional to the wages paid the workmen.

Few people know how much our plant managers spend in carrying employees through hard times when there is not work enough, in furnishing groceries and coal, in paying rent and insurance to assist sick employees, in giving a little Christmas cheer to those who are in misfortune. These things are done as a matter of course, year after year, without any advertising.

In many a community the plant manager is the supporter and patron of picnics, athletics, musical organizations among the men and many other wholesome forms of amusement. In some districts schools for special instruction in the needs of their work are maintained by the companies.

Elsewhere, lunch-rooms, waiting-rooms, wash-rooms and improved light and ventilation are the subjects of attention.

I have taken these items directly from the accounts; but please do not understand me to say that all of these things are done in all the subsidiary companies or in any one of them. Many of these things are done in all of the companies, and all these and other means of making better the conditions of its workmen are on trial and under consideration somewhere in the Steel Corporation, with the hope and the purpose of eventually bringing all the companies and all the plants to the best standards.

But right here I wish to impress upon you the necessity of making haste slowly in matters of this kind. Each community of workmen, each mill, has its own particular problems. What may be the duty of an employer in an isolated mining camp would be an unwarranted encroachment upon the independence of the men in a populous community. Always it has been the policy of the Steel Corporation to avoid any sort of paternalism. I believe that has been and is a wise policy for the ultimate good of the company, the workmen, and the country. But remember that such a policy

requires careful study of these various kinds of assistance to the workmen. At one of the National Tube Company playgrounds which I have mentioned, the young woman in charge said to a little girl, "Jenny, your face and hands are dirty. Tell your mother she ought to wash them every morning." Next day the face and hands indicated that Jenny had given them more attention than her mother. The instructress said, "Jenny, did you tell your mother what I said?" "Yes, ma'm." "And what did she say?" "She said you could go to —." This indicates the independence of a workman's household, an independence which may be sometimes mistakenly asserted, but which ought never to be mistakenly overlooked, ignored or undermined.

Most of the criticism which has been directed toward conditions of labor in the steel mills is applied to the hours of labor, the wages, or the want of organization among the men. There has been much loose talk on each of these three subjects—often without any attempt to analyze the facts or to find out the whole story. I will speak of these three subjects separately.

The hours of labor in the steel mills of this country grew up with the industry. They were not established by the United States Steel Corporation, and they can only be changed slowly where changes are shown to be practicable and desirable. The change most needed has already been made in the mills of the United States Steel Corporation in that seven-day labor no longer exists, except under special circumstances, and the so-called long turn has been practically abolished. This change of itself marked a great advance and ought to prove that effective efforts are being made for the elimination of excessive hours in the steel industry. It may be interesting to know that the changes required to permit Sunday closing in one plant owned by the United States Steel Corporation cost \$11,500.

The twelve-hour day exists among only twenty-five per cent of the workmen employed by the United States Steel Corporation, although in the blast furnaces and rolling mills, to which the twelve-hour day is largely confined, probably half the workmen have a twelve-hour day, more or less modified by periods of rest. As I have said, the twelve-hour day is confined almost entirely to those departments where operations are necessarily continuous throughout the twenty-four hours. Any employer of large numbers of men will tell you that the twenty-four hours must be divided into two turns

or three. The steel industry adopted the two-turn system long before the United States Steel Corporation was organized. The same system prevails in Germany, where labor conditions have probably been made the subject of more state supervision than anywhere else in the world. Personally I am satisfied that the lightening of labor by machinery and the rest periods prevent the twelve-hour day from doing any physical injury to the workmen. It may be that they have not a sufficient amount of time for their domestic and social welfare. That is equally true of a great many business and professional men in America. As a practical matter, there are many difficulties in making a change which will increase the cost of labor at a time when the price of steel products has been steadily reduced and wages have been steadily increased. Since the Steel Corporation was organized the price of its products has been reduced on the average about ten dollars a ton. Meanwhile, wages have been increased twenty-five per cent. Yet the efficiency of labor has not increased. It would be easy to substitute an eight-hour day for twelve hours if the workman could accept two-thirds his present wages, but the workman, like everyone else, prefers longer hours to lower wages; and there are more applicants for twelve-hour positions than for those where the work is only ten hours, because the former pay better. This is an economic problem which confronts the industry and time is required for its solution.

As I have said, wages have been increased twenty-five per cent since the United States Steel Corporation was formed. The corporation has always been opposed to reductions in wages, and in 1907 refused to make reductions, even when others did so. I believe I can say with confidence that no higher wages will be found in the steel industry than are paid in the mills of the United States Steel Corporation. It has sometimes been said that the wages of an unskilled laborer in the steel industry are insufficient for the support of a family according to American standards. While I do not believe the correctness of the statistics relied on has been established, I think there is yet another answer. Wages are necessarily much a matter of supply and demand. That always has been so—it probably always will be. The wage rate of common labor in the steel mills is affected greatly by the facts that a large proportion of the men who seek work are not accustomed to American standards of living and do not intend to change their own standards, and that a large

proportion of them are single men and have no families in this country. For these reasons they can work and seek to work even at low wages, because the supply of unskilled workmen is nearly always large. The same principles are applicable elsewhere than in the steel industry. For example, it is well recognized that wages of women are customarily lower than wages of men, simply because a large proportion of working women are not supporting families to the same extent as the men, and so they can work and seek to work even at lower wages.

Of course you ask me, "Shall these men go on living below American standards and unable to support families in this country?" I answer, "By no means." It is admitted that even now these men are saving money out of their wages, constantly increasing their savings-bank deposits, and bringing their families to this country by thousands. The way out of their difficulty in supporting their families according to American standards is simply to rise out of the ranks of unskilled labor into the ranks of semi-skilled and finally of skilled labor. There is no contention that skilled or semi-skilled labor in the steel mills is not well paid. There can be no question that the supply of such skilled labor is nearly always insufficient. There is customarily an over-supply of unskilled and an under-supply of skilled labor in the steel industry. Perhaps it may be asserted that the present-day immigrant cannot rise from the ranks of unskilled labor. I answer that every class of immigrants who have come to this country and have begun as common laborers have risen successively to the ranks of skilled labor, and that as a matter of fact, the present immigrants are doing the same thing all the time.

The question of organization among the workmen in the steel industry is too large, too serious and too difficult a subject to discuss in a small portion of a short address. It is a subject where discussion too often engenders ill feeling and most unfortunate bitterness, where differences of opinion are seldom accepted with patience or tolerance on either side. For myself, I believe we must get rid of lawlessness and of violence and of oppression on both sides and wherever they appear. I believe no agreement can be reached until the two parties are both prepared to seek an agreement on the basis of mutual advantages offered and of equal responsibilities assumed. We must learn that self-respecting and courageous men, whether workmen

or employers, will never permanently accept any arrangement reached by intimidation or by the doctrine that "You must deal with me or I will not allow you to deal with anyone." I am not going to discuss instances in which either party has acted contrary to what I believe right principles, nor to consider whether any such actions were justified by the acts of the other party. I shall simply state what I believe to be the record and policy of the United States Steel Corporation upon this matter: The United States Steel Corporation has made no war on unionism. It has acted wholly on the defensive and in defence of the principle of the "open shop," where employment is not a question of unionism or non-unionism, but of a man's ability and desire to work. There are great numbers of men in the employ of the United States Steel Corporation to-day who are union men and are known to be such. We do not believe it to be the wish of the people of this country that a man's right to work shall be made dependent upon his membership in any organization. We consider the principle of the "open shop" only another aspect of the principles upon which the government of this country was founded and has been maintained, and in that belief we think the people of this country are with us.

If I have dwelt too largely upon conditions in the United States Steel Corporation, it is because my knowledge of the effect of industrial combinations on labor conditions is derived largely from the conditions in the Steel Corporation. I am not unaware of the good work which has been done by the smaller steel manufacturing companies. I know there has been much of it, but I am not sufficiently familiar with its details to tell you about it. And it is my earnest belief that the great size, the great strength and the great organization of the United States Steel Corporation have made it the most effective factor in the improvement of labor conditions in the steel industry. I do not believe the smaller companies could have afforded many of the things which the Steel Corporation has done, or could have risked many of the experiments which it has tried and found to be successful. In short, I believe the well managed industrial combination is our most potent factor and our greatest opportunity for the improvement of labor conditions.

DISCUSSION

PETER ROBERTS, PH.D., SECRETARY INTERNATIONAL COMMITTEE, YOUNG MEN'S CHRISTIAN ASSOCIATIONS, NEW YORK: The first thing that occurred to me in listening to the papers read this morning was, that we need some definitions in order to clarify ideas upon this important question. An industrial combination exists for commercial purposes. It is not a question whether it has a soul or not. The reason for its existence is commercial. The faith that is in it is summed up in profits. The individual members of an industrial combination may be humane and charitable, but the combination has its being and its continued existence because it is the most profitable method of carrying on business devised by capitalists. We also should define a worker or laborer in the sense this discussion considers him. Sixty per cent of the workers of the United States make less than \$600 a year and none of us who are here this morning can call himself a worker in that sense. The men who depend for their daily bread upon the daily rate of pay given to them in industrial concerns are the people we have in mind.

It has been said by the gentlemen on my left that industrial combinations advance wages, those on my right claim that wages have been reduced. Both are correct. Wages is a very complex question, but we can state without fear of contradiction that the high wage of industrial workers which prevailed twenty years ago has been reduced, while the lower wage of unskilled workers has been raised. I was told the other day of a man who made \$83 in one day in a steel mill and that year his annual income was \$8,000. Another man who worked in Jones and Laughlin's, South Side, Pittsburgh, made \$33 a day for nearly five years. It was not unusual twenty years ago to find men earning \$15 or \$20 a day in a certain industry. These high wages have been leveled down, they are not found to-day. A plant that paid \$22 for riveting a car has the work done to-day for \$8, hence men who could make formerly \$5 and \$6 a day can to-day barely make \$2.50 or \$3. On the other hand, twenty years ago I knew men working for 90 cents and \$1 a day. The lowest wage I have found in industrial plants at present is \$1.30, \$1.40, and in the United States Steel Corporation the average would possibly be

\$1.60 for ten hours' work. I am convinced that industrial combinations pay a higher wage than independent concerns. It has been said that the standard of living should govern wages. I do not think that is feasible. Another remedy is to establish a minimum wage of \$2 or \$2.50 a day. An experiment is now being carried on in Great Britain upon this very point and we can afford to wait and see developments.

Effects upon working conditions. Under industrial combination they have both been improved and made worse. I visited a steam plant lately where four boilers of 420 h. p. each were fed automatically. The coal came in cars, was dumped into the hole, raised by chained buckets to a crusher, then conveyed to the hoppers, then shaken down by mechanical device on the fire. The man who attended those boilers had nothing to do save to watch the gauge, watch the water, and see that the steam was abundant. The grate was also cleaned by an automatic appliance, but it was necessary for the man to take a bar occasionally and release the clinkers from the grate. He told the superintendent that he wanted a helper for this purpose. The employer said: "Why, a few years ago you worked without a shirt, shovelled the coal on the fire yourself, cleaned out the grate in the old way, and then took out the ashes, and now you cannot take a bar to release the clinkers." "Oh," said the man, "that was —. I am out of that now." I remember the puddlers who stood before the furnace kneading pig iron for twelve hours a day. If they could get out three tons of metal they were good for nothing else and in summer time many of them at the close of day lay down from sheer exhaustion. Last week I stood in front of an open-hearth furnace having in it seventy tons of metal. It was fed by machinery, the doors went up and down by machinery. All the man had to do was to watch the molten metal, see that the gas was properly regulated, test the component parts of the mixture, and his three helpers were not slaves. Occasionally they had strenuous work and hot work, but it was as nothing compared with the man who worked before the puddling furnace twenty or thirty years ago. On the other hand, conditions are worse because of speeding-up and necessary disagreeable conditions. Take riveting. When this was done by hand it was hard on the ears, but it was an art and each riveter took pride in his work as a skilled worker. Now we have the pneumatic hammers worked by air, but the man who handles this kind of a

hammer is under tension and a strain that is not conceivable under the old manual method of doing the work. You work a riveter with these modern machines for eight hours a day for five consecutive years and he will not be good for much else. Take the molders. Machine molding does not require a skilled worker and still I have seen men working on chilled car wheels at a tension that eight hours would exhaust every particle of their strength. We want to preserve every improved condition possible and we are glad that these are possible, but we also want to consider the man who works under such a pressure that after five or ten years he is a dependent. These conditions demand attention, and I think that the remedy is that all employment which puts such a strain on manhood and womanhood that the strongest cannot stand more than ten years of it, ought to be subject to a rotatory system or a reduction of hours, that men and women may attain the point of greatest efficiency consistent with the demands of physical capacity and a well-rounded citizenship.

The effect on labor organization. This has been destructive. Industrial combinations have uncompromisingly fought labor organizations. Take the following instance: In a town in western Pennsylvania two tin mills were operated by independent concerns and they were thoroughly organized. The combination got hold of the mills and very soon they were shut down and worked only three months out of twelve in the year. The town was reduced from a condition of prosperity to one of poverty. The town council came together, and appointed a committee to wait on the representative of the combination in that section of the country. The men were made clearly to understand that non-union mills worked full time. They transmitted this message to the labor organizations and within two weeks both charters were returned. Since then, for the last six years, these mills have worked regularly with only the ordinary intermission necessary for repairs.

The discussion this morning has turned solely upon effect of industrial combinations on labor employed by these combinations. There is another large group of workers outside. What is the effect upon these people who are employed by independent concerns? There is unrest and dissatisfaction in the group employed by the combinations, but there is still greater unrest and discontent among the ranks of workers employed by independent concerns. I will mention two things that cause unrest. First, these workers see

protection given to the employees of industrial combinations. The work done in the establishment of industrial insurance by the United States Steel Corporation is splendid. It has set the pace to other concerns, but it has set agoing a greater desire on the part of workers in general to secure for themselves the benefits which are now enjoyed by the employees of the United States Steel Corporation. The legislators of every state are hurrying to meet this demand and still greater efforts will be made in the next few years to meet the clamor of wage-earners for insurance against accident and pension for aged workers. Second, the vast mass of workers also feel that industrial combinations give unto the few at their head a great advantage to take more than their share of the national dividend. The workers believe that they do not get their right share of the productive wealth of the nation. They affirm that the men at the head of industrial combinations take the fat of the fry, while a bare subsistence is given the vast majority of laborers. If \$800 a year income gives the head of a family bare means of subsistence, we must remember that fifty-four per cent of the heads of families in the United States do not come within a hundred or one hundred and fifty dollars of that figure. This discontent is real. It does not seem possible that conditions can last long under present rates of distribution. There are ominous signs of discontent. These have cropped out both in a silent way by the ballot and also by industrial upheavals which have arrested the attention of the civilized world. We must take these things into consideration and the unrest and discontent among the working classes to-day must not be pooh-poohed or blindly passed by.

MR. JOHN A. FITCH: I did not come here to enter into a debate, but since Mr. Bolling did me the honor of mentioning some of the things that I said, I should like to add just a few words more. I want to say that I have no animosity in this matter at all, and I believe in large combinations. I believe that it is possible for working conditions to improve more rapidly under large combinations than they can in small individual plants. I tried to put before you a number of evidences of their having improved.

I believe that all of us here are concerned about the welfare of the people, that we believe that folks are more important than billets, that it is worth while to consider whether men, women and children are well off in this country, and that this is more important

even than to get the foreign market away from Germany. Not that anybody has suggested that this is not a great thing, but I want to have it clearly brought out. We can easily consider questions that seem to be questions of fundamental justice, and forget the man that is down in the ditch. We may, in our intelligence, gather here and decide things we think are good for the world, but what we decide may hurt instead of help, if we do not understand the point of view of the man who works with his hands.

Mr. Bolling says that a great many union men are working in the Steel Corporation plant, and that they are satisfied. I question Mr. Bolling's right to speak for laboring men and to say just how they feel. I do not claim that I can speak for them. Yet my opportunity for observing them has been such, I think, as to make it fair for me also to express an opinion. For nearly a year in 1907 and 1908 I lived in Pittsburgh and talked with steel workers whenever I could. In September, 1910, I started on a trip to the steel centers of the United States, visiting Pittsburgh, Buffalo, Johnstown, Steelton, Bethlehem, Pa., Youngstown, Ohio, Chicago, Gary, Pueblo and Birmingham, taking ten months for the trip. I talked with laboring men in all of these places and tried to get their point of view. The things I have been saying have been based on that investigation. I found everywhere a great feeling of unrest, a feeling of bitterness, among the employees of the Steel Corporation as well as of other companies.

The Steel Corporation people believe, I think, that they are doing great things for labor. I believe they are mistaken. How can they be cognizant that they are doing the right thing when there is no opportunity for labor as a whole to express itself and to let the managers know what they want? I had a very pleasant interview with Judge Gary once and I told him some of the things that I have been mentioning to you. He expressed a wish that dissatisfied men could get in touch with him personally. At the Edgar Thomson plant some employees had gone to the superintendent with a petition, asking for an eight-hour day with an equivalent decrease in wages, and they had never received even a reply. Another group at the National Tube Company plant in McKeesport had begun to draw up a similar petition when they received word from the superintendent that they had better drop it. I told Judge Gary of these things and he said that that was not right.

Now there was a superintendent in a Pittsburgh mill, a highly paid man, getting a salary of at least three thousand dollars a year. I knew that he was opposed to seven-day labor. So an associate of mine, in view of Judge Gary's statement, wrote and asked if he would not circulate a petition among his men asking for one day of rest in seven. His reply was that he had been in the corporation for a long time and that when he quit he wanted to quit of his own accord, he did not want to be fired, and so he thought it best not to circulate the petition. Since then, I have talked with Steel Corporation employees all over the United States and asked them if they would be willing to sign a petition like that. The invariable reply was that they could not go over the heads of their superiors—they would be fired.

So here we have a situation where the men at the top want to do the right thing, but the organization is such that they cannot know the needs of the workmen—there is no means of communication. I am not talking here about employers who are putting men on the rack, who are lying awake nights thinking of ways of doing harm to their employees. Not at all. I am speaking of men who have humanitarian motives, but who are following what I feel sure is a mistaken policy, and who, because of this policy that prevents any discussion by the workmen of matters pertaining to their well-being, are prevented from dealing justly, and are continuing in force policies that are inimical to the welfare of the men.

I want to say just a word in regard to the statistics that I quoted, tending to show that the unskilled workers do not get enough money to enable them to live according to American standards. I quoted a study made by Professor Chapin and others in New York. I have not heard of statisticians expressing any opinion that that was not a scientific study. In fact, I think it is pretty generally conceded that Professor Chapin's figures are accurate. So, having the cost of living in New York, I took the figures of the English Board of Trade, from their study of the cost of living in America. Mr. Bolling himself suggested to me the other day that I do that. And I discovered that their figures showed the cost of living to be the same in Pittsburgh as in New York. So I believe that it was fair to use the figures the way that I did. The unskilled steel workers are not starving to death, and they are able to live, although in very wretched condition. But they are very largely single men, or men

who have left their families in Europe, because they cannot afford to support families on the wages that they receive. Conditions must be such in America that men can have families, and if our industries are to be manned by immigrants, wages must be such as to enable them to set up independent homes.

As to Mr. Bolling's suggestion that the way of escape for unskilled laborers is through their acquiring skill and moving up into the ranks of the better paid positions, I want to point out a few things that he has apparently overlooked. In the decade 1881 to 1890, the average annual immigration into this country was 524,661. Seventy-two per cent of these immigrants were from Northern and Western Europe and only eighteen per cent were from Southern and Eastern Europe. In the decade ending with 1910, however, the average annual immigration was 879,538, and of these only about twenty-two per cent were from Northern and Western Europe, while more than seventy-two per cent were from Southern and Eastern Europe. In the year 1907 alone, 1,285,349 immigrants came into this country and seventy per cent of them were from the three countries Austria-Hungary, Italy and Russia. I am quoting these figures from "The Immigration Problem," by Jenks and Lauck.

This is of great significance, in view of the fact that the immigrants from Northern and Western Europe are to a considerable extent skilled mechanics fitted to take the higher positions. A strong example of this occurred in the year 1897, when under a beneficent tariff the tin plate industry was born. There were no men in this country skilled in the manufacture of tin-plate, so we had to import skilled labor from Europe. I do not mean to imply that there was a violation of the contract labor law; but coincident with the building of tin mills, there was a great immigration of Welsh tin men. Now, when nearly three-fourths of the immigration is from Southern Europe, the unskilled labor market is being swamped. We are getting immigrants who know something about farming, and nothing about industrial occupations. In addition to this important fact the situation is further complicated, because in the steel industry especially the tendency is for the proportion of skilled men to become less and less. If all of this great mass of unskilled labor were capable of rising to the skilled positions, it would be a mathematical impossibility for any but a few of them to do so, on account of the relatively small proportion of such positions. The only way by which

it could possibly be done would be to kill off the skilled men as rapidly as possible and to eliminate at least half of the unskilled at regular intervals.

Just one word more in regard to what modern industry has done. Because of large combinations of capital, it is possible for labor conditions to be improved, but this is a possibility that has not been fully realized. Coincident with the development of great combinations of capital has come increased sub-division of labor. In earlier times, the man who started a process generally finished it. He had a chance to give vent to the creative or artistic instinct which he might have, but that is no longer true. Work has become specialized and no longer is there the opportunity that there formerly was for a man to put his personality into his work. He does one small part of the process of which he sees neither the beginning nor the end. So the tendency is under modern conditions of industry to make a man into a machine instead of a thinking being. It is just this condition that makes it essential that the working day be short, if we are going to develop and conserve the artistic spirit that exists among the workmen. The short day demand is not the demand of the lazy man who wants to do less work. An employer of labor said to me protestingly: "What right have you to stop a man at the end of eight hours when possibly he may be just getting interested in his work and want to see a process through? A man conducting experiments in a laboratory, for example, often starves himself and works feverishly for hours in the hope of bringing something to fruition, or of finding a new path, but you want to deprive the workman of this right to an eager interest in his work. You want to stop him just because the clock has got to a certain point." It is exactly because I want to accomplish that thing and want to conserve the workman's interest in his work that I favor a shorter work-day, so that he shall not have his spirit deadened by the mechanical efforts that he puts forth in his daily toil. He must have an opportunity to develop the spiritual and the artistic side of his nature, or modern industry is going to make him a poorer citizen instead of a better one.

MR. SAMUEL GOMPERS, PRESIDENT AMERICAN FEDERATION OF LABOR: I am very sorry that the false impression has gone forth that I work thirty-six hours a day. I have heard the gentlemen who addressed you, have been very much interested in what has been said,

and I will attempt to discuss in ten minutes some of the points with regard to which I shall be very glad to announce my entire assent and call attention to some of the statements from which I must express dissent. Notwithstanding any facility I may have to adapt and concentrate myself, I am sure that in ten minutes I shall do myself and you a grave injustice. I am very much interested in the statements that have been made. To jump and skip on the high places: I have had great pleasure in being acquainted for many years with Mr. McCleary who addressed us this morning as the typical "worker," and who is secretary of the American Iron and Steel Institute and located at New York. Of course the facility with which he can address an audience on the basis of being a "workman" must commend itself to your very serious consideration, particularly when we have the working men, the working women, and the working children of our country in mind. I know that Mr. McCleary has worked hard and long and assiduously, but I think that he has another basis from which to present this question than from the standpoint of the American workman, workwoman or working child, as I understand we are trying to discuss this question this morning.

I have met Professor McCleary, not only in his home state, Minnesota, but I have met him as a member of congress, a member of the committee on labor, and I am very sorry to say that I have spent my hours in vain before that committee, in the presence of Professor McCleary, if I have conveyed to him that conception of the philosophy of the shorter working day that he has expressed this morning. If my memory serves me right, he seems to entertain an idea, which he obtained before the committee on labor in the house, that there exists in the minds of the advocates of the shorter workday a notion that there is a fixed amount of work to do, and that if the shorter workday should be introduced there would be more work for all others to do. I say, if that is his conception, I have spent many idle and wasteful hours in explaining otherwise. For in every utterance that I have made on this subject, and those who have been associated with me have made, it has been the very proposition that a reduction of the hours of labor would, by reason of man's additional leisure and opportunities, for him and his family, and for this whole people, have as a consequence a larger vista of life, and a greater production of things, and a constant increase in demands, in which and for which it would be necessary to introduce more and better, and still better, machin-

ery and methods of production, giving more employment to the workers of our country. I should write myself down a dunce if I, or the men and women with whom I have associated, should advocate a proposition based upon the conception that there is only a certain amount of work to do. Why, the fact that there is a constantly increasing production of the wealth of the country would make such a position untenable. We want a shorter workday in order that a man may go to his home and to his little ones and spend there the time that shall help to make out the life of a full-rounded American citizen, and that he may have the opportunity of acquainting himself with the conditions of society, with his civic and political duties, and be in a better position to exercise these duties.

I take it that production is for utility, for use, and, as has been stated before, production is to-day on a large scale instead of upon a small scale. The conditions of the working people, I grant you, in many instances have improved. But there are two things that have been the result of combination, which did not exist prior to the formation of these industrial combinations. The time was when men worked from sun-up to sun-down. With the introduction of machinery and artificial light, workshops were operated after nature's light went down. In no time in the history of civilized nations, within the past hundred or more years, until the era of industrial combinations, were there so many long hours of labor each day. Secondly, never were there seven days in each week. The seven days' labor was the result of our industrial combinations.

I am not a man who finds himself in antagonism to the industrial combinations as such. I have believed that honest industry should not be hampered by meddling legislatures, but I also hold that the right of free association is essential to the wage-earners if an equilibrium is to be established between employers and employed. The tremendous power that industrial combinations hold over the workers when these are acting as individuals must be checked by the workers acting in unison. I grant that some of the labor conditions have improved since the era of industrial combinations, but I take issue with the gentleman who is solicitor for the United States Steel Corporation when he assumed the magnanimous position implied when he speaks of "what we have done for labor." What "we" have done for labor! I would prefer that all improvement should come through the manhood and character of the workers themselves. I

think a man improved who is unwilling to accept the charity that is offered to him; it is not a good substitute for bread honestly earned by the sweat of one's brow. The industrial combinations, it is true, have done some things, not voluntarily—very few of them have—they have either been forced to do it by the state or from fear of the industrial revolt. Some of the improved conditions which have been conceded by or forced from industrial combinations are more than offset by the destruction of the character and independence of the American spirit of the people in their employment. To-day the United States Steel Corporation is practically free from any "inconvenience" from the organized labor movement. It has peace in its plant. It is the sort of peace that the Czar of Russia proclaimed when he said, "Peace reigns in Warsaw." The United States Steel Corporation, and all of the other corporations which have either by direction or indirection in the same or lesser degree succeeded in crushing out labor organization, are lulling themselves into a fancied security, but one morning or other they will wake up and find it was either a dream or a nightmare. They have crushed out the organizations of labor in many plants. They have, by direct or indirect methods, opened up a channel of immigration to their plants, and American workers are there no longer to any appreciable extent. The managers think, in a way they know, that their immigrant employees are docile! They do their bosses' bidding without murmur, they go along patiently, carrying their burdens, and the heads of the combinations feel safe. So did the proprietors of the textile mills of Lawrence. The effect of all schemes put in operation by these corporations has been to degrade their workmen, to tie them to their work, to take away from them the opportunity of protest. But some day they will protest. Probably not in the same way as the American trade unions, the way of the American Federation of Labor, not by the good old-fashioned American plan, the Anglo-Saxon plan. But if the great industrial combinations do not deal with us they will have somebody else to deal with who will not have the American idea.

Just a word as to a remark made about what should be done, as a way out of existing conditions, that the unskilled workers should rise out of the ranks of the unskilled and move toward the ranks of the skilled. That is splendid, in theory, but in practice it is not a question of a man walking from one street to another by choice, or

walking from the slums into the parade grounds or to the parks. The unskilled workmen are not there by choice. They would prefer to be skilled workmen, and be able to join the skilled workmen in their ranks and be part of them. The fact of the matter is that with the wonderful machinery that is continually coming in, with the consequent division, subdivision and specialization of labor, there are less and less numbers of skilled workmen, proportionately, in each plant. The ranks of the unskilled workmen are constantly recruited from the ranks of the skilled workmen, who find their occupation gone by reason of new tools, methods, inventions.

I will close by saying that the American labor movement does not stand for lawlessness, for violence. We realize that none are injured more by lawlessness and violence than those upholding the cause of the men and women of labor. If perchance there be a wage-worker here and there who becomes a derelict and who resorts to violence, should all our movement and all our men be compelled to bear the odium? Is that test applied to every other profession and institution in our country? And I want to say this also, with regard to the remark concerning "these self-chosen leaders of labor." There are none of them self-chosen. They are the selection of the rank and file, by the most democratic methods. Their unselfish, self-sacrificing devotion to the cause of the working people, and their demonstrated worth, have earned them the respect of the toilers of our country. They are men who have tried their level best to do for their fellows. It is not pleasant, when discussing a concrete proposition, to have it hurled in the faces of the representatives of labor that they are self-appointed and self-seeking. Of course, I prefer the good will of my fellows to criticism, but there is still a greater preference that I have; I want to be satisfied that my conscience is clear, and that I have tried to serve my fellow-man.

PART TWO

*Competition as a Safeguard to
National Welfare*

THE POSSIBILITY OF COMPETITION IN COMMERCE AND INDUSTRY

BY JOHN BATES CLARK, LL.D.,
Professor of Political Economy, Columbia University, New York.

Our industrial system has become what it is as a result of competition and our entire policy in dealing with it depends on the question whether competition will or will not continue. If it does not continue, the safety of the public will depend on a regulation of prices by officials of the state. The objections to this measure are little appreciated. The complexity and difficulty of the work of fixing prices by authority and the uncertainty of the results are self-evident. Not quite so self-evident are the checks which the policy would put on technical improvement and the paramount importance of such improvement. Prices as fixed by a commission would doubtless be based, in the main, on the cost of production and a reasonable return for the producer. On such a basis a great trust might be able to make as much with antiquated appliances as with modern ones, and it would naturally rebel against the necessity of "sacrificing capital" by throwing away the machinery it has. So to speak, it would make no adequate use of a junk heap, and invention would stagnate—than which, if it became a general condition, no greater evil of an economic sort is conceivable.

On the other hand, if competition should continue, another measure would come into view as a possibility and it needs to be examined in advance. It is a certain restriction of the size of corporations. If they were large enough to do all the business in their several departments and were actually doing it, of course competition of an active sort would be extinct; but competition of a potential kind might theoretically remain. It is all important to determine whether this condition is or is not a satisfactory one.

Potential competition is a regulator of prices and is the product of natural law rather than legislation. It once gave promise of being, in itself, powerful enough to keep prices within a short distance of their proper level. In the eighties a number of the great trusts underwent reorganization in consequence of disregarding this in-

fluence. They raised prices too high and the potential competitor, who might have remained as a latent force, promptly materialized as an active competitor and broke the prices down. It was an object lesson, inspiring a salutary respect for the power of competition, and some of that respect remains, though not all.

The limit on prices which merely potential competition now furnishes is not a close one, and the reason for this is the power of the great producer to "slug" the small one when he actually appears in the field, by preferential rates of transportation, by local discrimination in the prices of goods, by the factors' agreement, and by other measures. The great producer has maintained his monopoly by driving his rival from the field, and has done it by unfair play, which can be ruled out by law. It is as if, in a game of chess, a bully could arbitrarily pick off his opponent's queen and defy him to restore it; or as if, in a game of whist, he could appropriate trumps or aces *ad libitum*. It is as if, in a football game, he could foully disable his opponent, in defiance of umpires.

In the economic field mere size does not, in itself, guarantee success in the contest of survival. The victory goes, under normal conditions, to essential excellence and that trait may be possessed by the smaller company rather than by the great one. Excellence as a public servant normally enables any producer to thrive and grow, and if this is made to be the actual test, as well as the natural and right one, the entire question of the continuance of competition will be translated to a higher plane. The excellent servant with a small capital will have an indefinitely better chance than he now has for survival, and until this condition is created it is unintelligent to draw the conclusion that competition is moribund. This means that we cannot know whether effective competition will survive or not till we have taken measures to prevent it from being killed by foul blows.

Some of those measures have long been well known, as a matter of theory, and some effort has been made to put them into practice. There is less favoritism in transportation than there once was. Local price discriminations and the factors' agreement are things which can be repressed. The monopolizing of raw materials can be prevented and, in a general way, a condition can be created in which any producer can thrive if only he renders to society a service which entitles him to do so. When that has been done,

it will be time to pronounce a final judgment on the future of competition. Before it has been done, it would be an absurdity to do so.

Potential competition is now by no means extinct. In the case of every trust, however powerful, it has some influence on prices, but its influence is not what it should be. It is by no means what it will be when the foul blows of which it is now in danger shall be ruled out. It is all important that we should have clear evidence of its existence and its efficiency, and the only evidence which is conclusive is the presence of a certain amount of active competition. Where prices are high enough to afford a handsome profit to a new producer and he actually does not appear, there is something wrong in the situation. The evidence that he can appear will be furnished if he sometimes does so.

In industries where trusts are extremely powerful, there are usually some independent producers. If they are tolerated only by grace of the trust and can operate only in small and sharply defined fields, they afford no evidence that competition is really free. There may be a policy in letting them live as a means of hoodwinking the public and as the basis of the claim before the courts that no monopoly exists. If their existence is not a matter of tolerance but of necessity, if the trust cannot crush them without unfair blows and is not allowed to resort to these, then a certain freedom of competition does exist.

It will always be for the interest of a great corporation to possess itself of the whole of its field, if it can do so without danger. As has been said, the government can make that dangerous; but it can do more than this, namely, it can reduce the temptation to resort to evil practices, by making impossible the gains that now come by means of them. It can prevent a corporation from absorbing a rival's business as the result of a successful war upon him.

We are living under the Sherman Law, and there is no probability that it will be essentially changed. There is, at present, good reason why it should not be. It is to be hoped and expected that corporations doing inter-state business will be required to act, either under a federal license or a federal charter, and that an industrial commission of some kind will decide who shall receive such charters. In performing this duty, the commission will be the supreme protector of the public, and if it is able and faithful, it will never license a company which is in possession of the whole field of its special

industry. It will impose on every corporation a burden of proof; first, that it does not have the whole field; secondly, that rivals maintain themselves by their own excellence and are not tolerated as a blind for the public; thirdly, that there are enough of them to affect the standards of price in the whole industry; and fourthly, that the way is so open for the entrance of more that prices cannot become extortionate.

It will be seen that this amounts to putting some restriction on the size of corporations. If we call it a definite regulating of the amount of their capital, we use a somewhat misleading expression, for the policy does not involve determining, in a statutory way, what fraction of the total capital of an industry a particular company shall control. To say that a corporation shall never be allowed to have more than fifty or seventy-five per cent of the total capital of the industry would lead to practical difficulties; and though it may be possible to surmount these, it is much easier to avoid them. If we refuse federal charters or licenses to corporations which cannot show that active competition exists and that potential competition is free and effective, we accomplish the purpose in view, and it is then less important whether the field is in the possession of one colossal company and many smaller ones, or in that of one company which is very large and a number of others of moderate size. If this were the place to argue the question, I would maintain that under such a system, tolerant competition, as distinct from cut-throat competition, is probable. The motive for a fierce war of prices is a desire to absorb a rival's business and it will be removed if that absorption itself is rendered impossible. It is an unthinking judgment that assumes at once that even such a division of a trust as should make ten corporations out of one would be followed by a war of extermination between them, and that the necessity for a future union would so reveal itself. We can divide an enormous trust into ten fragments, if we wish to do so, and can probably escape the direful war of prices which many persons anticipate. Nevertheless the view here advocated is that such drastic divisions are probably unnecessary. What may be said with certainty is that the need of them has not been proved. Short of that it is in our power to give to competition complete, vigorous life, and thus to retain, in our industry, that principle of progress on which the value of the system and the hopes of all that live by means of it depend.

UNFAIR COMPETITION BY MONOPOLISTIC CORPORATIONS

BY BRUCE WYMAN, A.M., LL.B.,
Professor of Law, Harvard University.

I believe that it is high time that we should give up the hopeless attempt to destroy by law without making any distinctions all aggregations of capital, and that we should adopt in its place the promising program of the regulation of the whole situation by appropriate law. The ideal condition, to my way of thinking, is to have monopoly, where that is the more effective form, and competition where that is the natural thing. To that end, the law should do its best to see to it that there shall be an open market in which that type which is the economically advantageous one shall survive. When it is more or less true that any man may enter any business upon his merits, the maintenance of this open market is assured. But if men in every business are left at the mercy of the predatory tactics of the combinations, the door of opportunity is closed. And to the majority of men an end of competitive conditions in the ordinary businesses would seem the final catastrophe beyond which there could be nothing but the horror of anarchy or the hopelessness of socialism. It is because of these perils to society that we are finding to-day such agreement as to the propriety of regulation of the industrial situation by law. A very great change this is, from the doctrines of *laissez faire* of the early nineteenth century to the principle of state control in this early twentieth century.

It is fundamental in our law that mere competition is not a sufficient justification for taking away business from a rival; it must be fair competition as well. Generally speaking, a customer may be taken away from a rival by any fair inducement, but not by any unfair methods. Advertisement and solicitation, for example, are fair; fraud and intimidation, equally plainly, are unfair. Speaking generally, as one must here, that is held fair which the community regards as consistent with its safety; that is held unfair which the state considers dangerous to its peace. The predatory tactics of the modern trusts have shown us that there are new wrongs which our

law must be prepared to meet. It is not enough to maintain an effective police against the old wrongs. There are new sins against industrial society which the law must be capable of reaching. A narrow conception of the older cases would not give the law scope enough to meet these new conditions. But our common law, as a system of justice proves itself, from age to age, capable of dealing with the wrongs of which that age complains. Make the law as big as the business, and the problem is solved.

It is one of the paradoxes of the time that, while every praise is accorded to those leaders in any business who bring about noteworthy progress in industrial efficiency, there is apparently nothing but universal execration for those who have founded the great concerns in any industry. And yet it seems clear that in certain business you can not have the highest degree of industrial efficiency without the greatest possible concentration. Where monopoly is thus natural, I am prepared to argue that there is necessarily something good in it, which can be turned to the common advantage, if its conduct should be effectively regulated. Indeed, I am not afraid to say that I believe that efficient regulation is the real solution of the trust problem, because I see in many of the trusts much that can be turned to good, as well as much that is a menace to the public welfare. At least, I think it is time that we should face the fact that monopoly is inevitable in those businesses where the situation is such that competition will not longer work effectively. The present campaign for the dissolution of all aggregations of capital I consider as unintelligent as the terrorist propaganda.

I do not believe that the law should any longer attempt to destroy all of the trusts. Neither do I think that we should make an entire change in the law, and be content simply to regulate all of the trusts. I believe that there are good trusts and bad ones, although it may be difficult to draw the line between them. That is, I would have the anti-trust laws remain on the books substantially as they are, so that the recent victories against illegal combinations might be followed up; but I would have new legislation by which legitimate concerns might no longer be worried. It may be hard to distinguish illegal aggrandizement from legitimate growth, but this will be no more difficult a line to draw than that which divides illegality from legality in many another matter. Indeed, I think that the distinction between natural monopoly and unnatural monopolization

should now be sufficiently clear, if not to business men themselves, at least to their counsel.

There are policies which have been used in the past to get control of the market the illegality of which is beyond argument. The story of these ruthless forays by which the robber trusts used to harry the country accounts for much of the indiscriminate denunciation of the trusts which we still hear. (1) Foremost are the rebates from the railroads, to which many a trust owes its dominance. (2) Hardly less important has been the abuse of the patent laws by the getting out of lists of patents as the basis for lawsuits against competitors. (3) Another similar policy was the establishment of a bogus competing concern. (4) Bribery of employees to get at trade secrets appears all too frequently. No one can defend such policies; we need not discuss them further. Where these circumstances appear, no mercy can be shown. But these are unnatural monopolies, or, at all events, this is illegal monopolization. Some of these trusts could never have gained their control of their markets without such predatory competition. If they still have control of their market, it can only be because they are maintaining their monopoly by unfair tactics.

But there are other policies by which many trusts have gained their dominating position, the illegality of which has not been so clear. (1) Such an excluding policy as the refusal to sell to retailers, who persist in buying anything of a rival manufacturer, is one example. (2) Making a lower price in certain localities, where incipient competition has appeared, is another. (3) Imposing terms in leases that the lessee shall not buy anything of the same sort has been used with fatal effect. (4) Fixing the prices at which the product may be resold is in the same class. The monopolies which are keeping their position by these policies have no economic justification, and for them there can be no defense. I believe that the law should punish such discriminatory practices as these so severely that no one would take the risk of employing them. We have been successful in making railroad rebating almost as dangerous to practice as embezzlement. What I am urging is regulation to any degree that may be necessary. For I believe that such police of the commercial situation is necessary for the securing of industrial freedom.

Little need be said by me in support of the general policy for free competition. Equal opportunity for individual advancement

must be insisted upon if society as at present constituted is to exist. To what extent combination may be allowed in competition is a matter about which there is as yet much conflict. It is plain that the proposition that what one man lawfully can do, any number of men acting together by combined agreement, lawfully may do is too dangerous to pass unchallenged. It is to be received with newly disclosed qualifications arising out of the changed conditions of civilized life and of the increased power of organized combination. The difference between the power of an individual acting according to his preference, and that of combination is fundamental. The law of the land ought long ago to have made punishable these crimes against industrial society. If trade competition be the industrial war we are told it is, at least let us have those laws of war that modern humanity demands. It is the disgrace of the law that it did not see sooner that business policies which were not especially harmful in the older days of free competition had become too deadly to be allowed when employed by a monopoly.

The great combination with substantial control of its market differs fundamentally from the small one which is simply a factor in competition. Our law from time immemorial has subjected those who had monopoly, whoever they might be, to an extraordinary system of regulation, as compared with the virtual freedom accorded to those who had no control of their market. This regulation by law has always been the policy of the state in dealing with any business which has so far attained control of its market as to be affected with a public interest. What the law regarding monopoly has always considered as altogether illegal is any form of discrimination. Discrimination in the conduct of a business which is affected with a public interest is essentially dangerous. We have put an end for practical purposes to railroad rebating by the Interstate Commerce law with an Interstate Commerce Commission to enforce it, and I believe that we could be equally successful in putting an end to trust discrimination by an Interstate Trade Act with an Interstate Trade Commission to enforce it.

What I would urge would be not a repeal of the Sherman act; I would leave that for its appropriate work of dissolving combinations in restraint of trade. But I would supplement it by an act to regulate concerns that have established a control of their market. My own idea in drafting such an Interstate Trade Act would be to follow

the Interstate Commerce Act, as far as that could be done. In doing this, we should have the advantage of using a well-tested code. As the President in his trust message declares himself ready to accept an Interstate Trade Commission, it is not improbable that the present Congress will provide for one upon somewhat the same basis as that of the Interstate Commerce Commission. Only legitimate concerns, however, should be permitted to register themselves under this commission; the illegitimate monopolies should be turned over to the tender mercies of the anti-trust law, although the commission might well be invested with the power to superintend the dissolution of these monopolies.

First.—Establish an Interstate Trade Commission of seven members, with salary and tenure like the Interstate Commerce Commission. The present Bureau of Corporations should be made a bureau of the commission, to serve it as an investigating agency. A year ago the proposal of an Interstate Trade Commission would have aroused a storm of protest. We would have been told that it meant socialism and nothing less for the government to attempt to regulate these businesses thus. But governmental regulation—even to the extent of fixing prices—has been urged so often during the past few months by such influential persons that I assume there are very many of you who are quite ready to have such a commission tried, and your interest will be in the details of the proposal.

Second.—Require every manufacturing and trading concern of a certain size to register itself with the commission in order to get a federal license to engage in interstate commerce. There is, it seems to me, no need of requiring federal incorporation of the trusts under the control of a trade commission any more than there has proved to be need of federal incorporation of the railroads subject to the commerce commission. Demand of every concern registering, a full statement of its condition, including particularly its capitalization and the basis of that capitalization. Require each registered concern to make an annual report, including its balance sheet, income, account, volume of output, value of output, etc.

Third.—Give the Interstate Trade Commission power to regulate all concerns that have substantial control over their market. This can be determined in the first instance by the commission upon the basis of the returns that have been filed by the various concerns upon taking out their federal licenses. Concerns that have a substantial

control over their market are so affected with a public interest that they may properly be controlled to the extent that the public services are. Moreover, the commission should have full powers to make investigations and report thereon. If they find that any concern is party to an illegal act, they should bring the matter to the attorney-general for appropriate action.

Fourth.—Define what are unfair practises; for destructive competition in a monopolistic business has various forms, such as (1) selling in one locality at discriminating prices in order to force out local competition; (2) selling one grade or variety at disproportionate prices in order to force out competition; (3) refusing to sell to purchasers who will not agree to deal with a rival; (4) imposing terms in leases that the lessee shall not buy anything from any one else; (5) fixing the terms and prices upon which the product shall be resold; (6) establishing a monopoly by requiring the purchase of other things from the patentee than the patented article. In other words, prohibit making discriminations against customers who refuse to obey the dictates of the trusts. Make this plain by requiring sale to all purchasers upon equal terms under substantially similar circumstances.

Fifth.—Give the Interstate Trade Commission power to give relief against extortionate charges. At first, confine its power over prices to reducing prices against which specific complaint has been made to it, but in disposing of such complaints let it fix the price in question for the future. Provide that full returns shall be made as to the outstanding securities and actual capital of the concerns subject to the act as the basis for such regulation. But at first provide that dividends shall not be reduced when the concern in question is not making more than a fair per cent of profit upon each transaction. I would go very slowly in this matter at first, giving the commission only power to give relief in particular cases of outright extortion. Here, as elsewhere, I believe in preserving individual initiative. I am for state control, not for government management.

Sixth.—Persons aggrieved by unfair competition or by extortionate prices may bring complaint before the Interstate Trade Commission, which shall give appropriate relief. Aggrieved persons may also bring suit in courts for unfair competition or extortionate prices. The commerce court should have the same powers in relation to appeals as from the Interstate Commerce Commission. The com-

mission of its own initiative should have power to investigate unfair business by any registered company and report its results. The commission might perhaps be empowered to pass upon new issues of securities by the corporation subject to its control.

This program ought to accommodate the conflicting interests involved in this issue. It should be the abuse, not the possession of monopoly, that should subject a concern to prosecution under the law in the future. The essence of the wrong of monopolization is the excluding of others from the market, not the mere growth of the concern itself, by successful activity. In other words, it is unnatural growth by unreasonable tactics that should be punished, not natural growth by deserved success. Monopolization by exclusive policies and unjustifiable discrimination is the thing to be prevented. Make the law as big as the business and the problem is solved.

With an open market, a rival concern may succeed on its merits; but not if the trusts are allowed to control the market. If this opportunity is preserved, there will be protection against any injury to the public—if not by competition itself, by the potentiality of competition. If the unfair competition of the trusts is forbidden, competition by outside concerns will always be possible. There is in every industry an impelling tendency to do business upon that scale, large or small, which is economically the most advantageous. If the law sternly repressed unfair tactics the natural processes of fair competition would inevitably result in there being natural monopolies only in those comparatively few businesses where there is no limit to the law of decreasing costs. Only those trusts that deserved to survive would survive; unless they could produce cheaper than their rivals, they would be doomed. By this legal solution we might solve the trust problem by the natural method.

COMPETITION AS A SAFEGUARD TO NATIONAL WELFARE

BY TALCOTT WILLIAMS, LL.D.,
Philadelphia.

We need to remember and as constantly forget that free competition, like personal freedom, is the last child of promise and of the constitutional covenant born to organized society. Civilization and a very high civilization may exist without free competition, free contract or personal freedom. It may exist where these are the portion for but the few, as in a Hellenic city state. But free competition, free contract and personal freedom for all men is the last gift of high civilization. This has only existed for a century in England. It is just half a century old in this country, and began with the abolition of human slavery. The real issue, threatened on the one side by the directing forces of capital who seek to continue monopoly and privilege through the trust, and threatened on the other by the laboring forces of society through trades union, without violence in the American Federation of Labor and with violence in the Industrial Worker of the World, is whether, these three precious gifts of slow time and a long martyr roll shall be preserved in the industrial development of society now before us, or destroyed entirely by these two agencies. Capital seeks monopoly at the cost of free competition, free contract and the personal freedom and equality of choice and use in any trade, transportation, production or manufacture, because the directing minds of the capitalized industrial forces of society honestly believe that their complete and efficient development is only possible at the sacrifice of free competition. The directing minds of labor, aided by all economic students who have acquired or inherited the college settlement type of mind,—most useful in modern society but more interested in the distribution of the product than in efficient production,—as honestly believe that a larger and adequate share in the product of the joint effort of capital and labor can only be secured through the frank surrender, by the individual, of free contract, free competition and the personal

freedom of a free choice of any pursuit or labor, for which a man is fitted on even terms with every other man.

Trust and union are equally honest in their claim. It is an error to think that those who manage trusts are seeking solely the wealth which they will obtain. Every able man in this field is interested as much in accomplishing great things as in amassing a great fortune and his conviction is that free competition, free contract and complete personal liberty in all commercial relations cannot be permitted without injury to industrial development. The trades union and its leaders alike believe, as John Mitchell said nine years ago to the anthracite miners, that it has ceased to be possible for men to rise, that a stratified organization of society must be accepted and that those on a particular level of ability must be satisfied to take less than they could earn under a system of free competition and free contract, in order that the average may be raised for those who are less able, less industrious and less efficient. Both these new economic forces, the trust and the union, will endure and do great good, but neither can be allowed to limit free competition, free contract and personal freedom.

This proposal to sacrifice these rights to industrial development, on the one side, and to a higher average wage, on the other, is the more easily made because these rights are recent, not yet part of the common consciousness of society. Under mediæval conditions free competition did not and could not exist. When land transportation is carried on by sumpter-mules, moving at three miles an hour on a dirt road, burdened with the cost of a guard against highway robbers, each city is an independent economic integer. When famine comes, it is not possible, under these conditions, to carry grain to save the starving a distance of over one hundred and fifty or two hundred miles. To-day, in the East, in places which are separated by these intervals, plenty may exist in one tract and starvation unto death in another. The mediæval city was an economic world to itself. Within its limits the guild jealously guarded a monopoly of each particular mechanic art and the members of the guild, enjoying "the freedom" of a particular trade, were able to exclude wholly anyone else from joining in it. The denial of the personal freedom of the choice of any trade wholly cut off free competition, free contract and the personal freedom of the individual. This endured in France until it was ended by the Revolution. It existed over Europe until it was ended

by statutes passed at various dates between the opening of the nineteenth century and the organization of modern states, the last of them in Germany, Austria-Hungary and Italy. Over great tracts of Russia and nearly all of Asia general competition between regions in trade, products and supplies is limited to the wares and articles used by the few. Except on the sea coast and as foreign wares penetrate the interior, the free competition which cheap transportation, free to all, has introduced into the modern economic world does not and cannot exist. As every one knows, caste in India is primarily an economic and industrial and not a religious division of society. Nearly all the castes are, historically, comparatively recent. When population began to impinge on food, free competition, in the supply of food, which the triple expansion engine and the modern railroad have brought, was wholly absent. In each congested village and city population in India where no one had ever known free competition and free contract, it was easy to seam and divide society by groups which excluded all other men from the particular vocation which each selected, which guarded their civil right by religious rites, under a primitive faith, which turned in worship to whatever had power, and, as this organization became hereditary, there gradually grew that mingled product of industrial conditions, of ancestral employment, of religious sanction and of social separation which constitutes the Hindu caste. The like appears in our own day. The law under which a commission of anthracite miners decide who shall become an anthracite miner and suspend the operation of examining and certifying to new miners, whenever a strike comes, is the first step to an anthracite miners' caste. The trades unions, familiar in every city, to which it is difficult to secure an election for any but the sons of members, the kin of those in whom they are interested, are another nascent step towards the denial, in the trade which they control, of free competition, free contract and personal freedom of the choice of vocation for each man, without any test or bar, except such as the law itself may impose, open to all to prove proficiency by examination.

The regime of free competition, free contract and personal freedom, which is constantly treated in all discussions of this sort as immemorial, is, in fact, the recent product of civil liberty, cheap transportation and the rapid increase of product under the factory system. But for free transportation the factory would not have

grown beyond the product of what would satisfy the region which it served. In the Knight sugar cases the government sought to show that the sugar melted could not be consumed in the territory immediately around the factory, and the court refused to consider such testimony, but, as a matter of fact, except for the railroad the sugar refinery of to-day, like the refinery of the early part of the eighteenth century when sugar was still a luxury, would be forced to limit itself to a small region and the area around, which could be reached under primitive methods of transportation. Civil rights carried with them free competition, free contract and the personal freedom of choice. The railroad and steamship opened the market, the latter first by sea, the former later on land, and the growth of the factory system brought a new competition before unknown, over an entire continent. This has grown so familiar in an age when the product of a single pottery in Staffordshire may be found on the shop shelves of the civilized world, that it is difficult for us to recollect that in lands still under primitive conditions and in all lands, as the collector well knows and is still the case in China, the methods, the shapes, the patterns, the decoration, the colors and the character of the ceramic wares of a country change wholly with every few miles, so that each region feels little or no stress of competition from another.

As capital developed the factory system and as labor grew in organization, both these factors have sought to limit free competition and free contract. Cheap transportation had created free competition, and the most deadly assault on its development and extension was carried out by rebates on railroad rates and special contracts on steamship lines, such as the House of Lords approved in the Mogul Steamship case twenty-three years ago, both of which have built up monopolies in trade, restricting competition in this country and in England. By an instinct as unerring as always attends the exercise of an economic appetite for larger profits, the precise cause which had created the reign of free competition was the one first attacked. In the same way as the abolition of guilds, the abrogation of industrial privilege and the opening of all pursuits and all trades to all men had created a general advance for labor, so labor laid its hand first on the old weapon of the guild, in order to create special economic groups which could protect themselves against competition.

Nowhere was the opening of cheap transportation more com-

plete or the abolition of free industrial privilege more sweeping than in the United States, and nowhere else has there been a more complete development of free competition, free contract and personal freedom. To this cause and to this more than any other must be attributed the amazing industrial advance of the United States. This is constantly laid to great resources, but these resources exist everywhere: coal, iron, fertile fields and all the illimitable products of the soil, the waters and the empire under the earth are present in many lands, but it is only here that over an entire continent just courts have enforced the free privilege of contract. Nowhere else has that embodied contract, a corporation, been given wider privileges, nowhere else has the competition created by cheap transportation been more complete, and nowhere else, be it remembered, has the determination to preserve this competition against the encroachments of capital or of labor been more constant, more continuous or more successful.

The weapons lie close at hand. Exactly as the common law through centuries had created a protection for the personal freedom of the citizen, which was at last embodied in the habeas corpus act, an enactment which only put into statutory form what was already the common law of the land, so the common law protection of free contract and free competition, which had been the common law of the land, was embodied in the Sherman anti-trust act. Exactly as the powers which the King's Bench had originally exercised, in order to protect the citizen against the encroachment of the donjon keep and baron and all the special rights which permitted imprisonment, without due process of law, were disregarded by royal judges when the Crown sought to extend arbitrary powers, so the free industrial systems built up by free contract and free competition after they grew great and extended into combinations sought first to encroach upon and then to destroy the very regime by which they had grown both profitable and beneficent. The same freedom of association for all men, which had been thrown wide open when guilds and the special privileges of trade associations were destroyed by statute and far-reaching decisions in England and in this country, was employed by labor to forge anew the fetters from which the industry, the energy and the efficiency of the individual had been unloosed.

No one has profited more by this freedom than labor itself. It is not only that wages are higher in this country, so that allow-

ing for every difference in price the purchasing power of wages is, as an English department has recently ascertained, nearly one and a half times greater than it is in England, and the share in the results of every industrial enterprise divided between capital and labor is far greater for labor than for capital in this country, as compared with Great Britain. Of the gross earnings of our railroad systems, nearly one-half go to labor in various forms, and considerably less than one-third of the return on capital in dividends and in interest. In England the share given to capital, instead of being one-third that paid out in wages is actually larger. This same proportion follows through the entire industrial system of Great Britain and the United States in our factories and in our mines; in our retail stores and in all our agencies of distribution the same broad fact appears that the share of every hundred dollars paid out in wages and paid out in the return on capital is relatively far greater in this country for wages than it is on capital. Free competition has done more to accomplish this than any other cause. The capital employed in American railroads, taking as a measure the par value of shares and bonds, reaches \$17,000,000,000 on 223,000 miles, taking 1908 as the year of comparison. In the United Kingdom the total capital is about \$6,500,000,000. This disparity, roughly expressed by an average capital per mile in the United States of \$75,000 per mile and in England of \$300,000 per mile is, as we are all perfectly well aware, by no means a measure of the relative expenditure of capital on both systems. In England the general practice has been to carry to the capital account all expenditures which added permanent improvements, and, in many cases, new equipment. In the English railroad practice, as in the English practice in municipal enterprises and in manufacturing, no adequate depreciation account is carried. The English railroad system is still vainly endeavoring to pay interest on the cost of engines long since scrapped and rails long since replaced. Were the accounts of a system like the Pennsylvania Railroad to be rewritten upon English lines, its capital expenditure per mile of line would be greatly increased. Free competition in this country has brought a pressure on every enterprise which has made the scrap heap an economic asset of the first magnitude in the development of the country. As far as possible, additions are carried in maintenance accounts, capital is restricted, and much that would be accepted as capital expenditure and a profit jealously sought upon it in England

has here gone to the national scrap heap. The pressure of free competition has forced this practice.

In England, on the other side, the railroad system, from the start, has been closely interlinked, because, under the English railroad system, the capital of the country, very largely centered in a few hands, has constantly labored for the preservation of the capital rather than for the efficiency of the line. When we speak of free competition we are not alone narrowing ourselves to the limited economic outlook, we are remembering also the free social competition which makes all careers open, which does not, as in England, feel that a railroad board of direction commands a greater public confidence because it has on it members of the group of ruling families which has, through generations, enjoyed through rank, privilege, and in many cases, inherited ability of a high order, a practical monopoly. There are great families in England, like the Cecils, wise enough to enter early on the railroad system, who have had a weight in railroad management as great as that in affairs and have exerted themselves in both instances for the conservative protection of the profits of capital. The system of which they were a part relieved them from the free competition which pulses like an electric current through the whole American railroad system, in which the new man is perpetually, decade by decade, appearing and revolutionizing all that has gone before, scrapping in his operations, shares, bonds, roadway, equipment, and adding a new increment of efficiency, not only to the lines which he directs and controls, but to the entire transportation of the country. Such a man was Harriman. The free competition of a continent made his career possible.

The practical result and the advantage of free competition might be rested on these two railroad systems alone. Under the widespread habit of all competing for the advantages of competence, due to a universal social competition, the owners of the American railroad system number, as nearly as can be ascertained, 1,000,000, without taking into account the indirect ownership of depositors in savings banks and the holders of life insurance. The total number employed on American railroads, in 1908, aggregated 1,436,275. The number employed on English railroads is about 700,000, half those employed in this country, with the inevitable result of wages so low that over nine-tenths of them receive only one pound per week. The total yearly compensation paid in the United States to all rail-

road employees was \$1,035,000,000. The amount paid in England in wages was about \$180,000,000 for the same year. While the number of American employees was about twice that in England, the total sum disbursed in wages is between six and seven times as great. The capital embraced in American railroads, earned dividend and interest in all shapes, \$700,000,000. The amount disbursed in England for the same purpose was \$206,000,000. While the ratio between the wages fund in both countries was as six to one, the ratio between the profits of capital was three and one-half to one.

These contrasts could be carried through the whole system of industry, as contrasted between England and America, or any European country and the United States and through all of them there would be found similar ratios of a larger share given here to wages and lesser share given to capital, and in all fields, as a result of free competition, a higher efficiency of labor and a sharper struggle to maintain the efficiency of capital and to prevent the dead hand of the past from reaching into the profits of the living present. Maintain free competition and this great progress can be preserved through all the future. Maintain the freedom of transportation and equal privileges upon it, and no matter how great the combination may be, it will be true of it, as it has been true of the Steel Trust, the Rubber Trust, the Sugar Trust and the Woolen Trust, that each decade sees them control a smaller fraction of the industry than at the beginning. Break up by the unflinching enforcement of the principles in the "Sherman Act" any combination which seeks to prevent this operation of free competition, and the same process will go on in every industry. Through twenty years, step by step, the judicial power of the people, that great arsenal in which, from the early days, wherein the King's Writ began to run through all his kingdom and override all lesser jurisdiction, the weapons of freedom and free competition were forged, generation by generation, has been here also protecting this great inheritance. The last great decisions on the Standard Oil and the Tobacco Trust are destined to be the charter of free competition to the American people through all their future. The general principle of the common law has been clear from the beginning, that no power within the state was permitted to have a possibility of interfering with the personal freedom of the subject, and these decisions, consciously and unconsciously applying the early principle which broke into every castle keep and, freed from ancient preju-

dice, the restraints laid upon personal freedom and trade alike, have laid down the principle that the mere fact that a corporation had the power to interfere with competition was sufficient cause for its dissolution. Time will be needed for this to work out its full force in its full application. Exactly as the reader of English history is familiar with the pages in which special privileges, here and there, like those of the City of London, of the Palatinate and of other lesser jurisdictions survived, interfere here and there, as Blackstone notes from time to time with the uniform and general jurisdiction of the central court of the realm and royal sovereignty, so there will be a penumbral season in which a well-managed trust will divide up into fragments:

Quinquaginta atris immanis hiatibus Hydra
Saevior intus habet sedem,

which Virgilian line, freely translated, means that the hydra is more dangerous than ever seated within, when divided into fifty dark and formless parts. But the American people, with that instinct alike for self-rule and for empire which has unconsciously guided them through a century and a third, often blundering as to means, but never swerving as to ends, is determined to maintain the regime of free competition at all hazards, and in the end capital struggles in vain to secure the privileges of the past, and labor, which vainly seeks to impose upon itself the old chains of guild and caste, will be both forced by a sovereign people greater than either, to accept that universal rule of free competition, free contract and personal freedom, on which rests alike the safety of the republic and the prosperity of its citizens.

THE FALLACY OF "BIG BUSINESS"

BY E. S. MEADE, PH.D.,

Professor of Finance, University of Pennsylvania.

Former President Roosevelt, and many other representatives of the same school of thought, are urging upon the American people the extension of government regulation of industry into the field of industrial combinations. They propose that an interstate trade commission shall be established similar in functions to the Interstate Commerce Commission, which shall regulate the large combinations, securing for the public what they assume to be the advantages of combination and protecting the small producer against extortion and unfair competition.

This program proceeds from the assumption that the so-called industrial trusts, combinations of manufacturing plants under New Jersey holding companies which sprung up in large numbers from 1898 to 1902, represent a type of business organization which, while it contains great possibilities of evil, contains, also, equal possibilities for good. They contend that we have in the trust an advanced type of business corporation which is to supersede the old and, as they claim, outworn regime of competition. This superior type of business organization may be carried so far as to threaten consumers with extortion, and smaller producers with oppression and extermination. It is, therefore, proposed to place the trusts under the supervision of this trade commission, which shall keep them within the paths of rectitude and just dealing.

It needs but slight familiarity with the history of these combinations to show that the assumption underlying this program of trust regulation, the assumption, namely, that the trust represents a superior type of business organization, is unfounded. The primary object in organizing the trust, an object exploited at the time most of them were promoted, was to eliminate or restrict competition. The advantages of the elimination of competition were stated as follows: (1) control of prices, (2) greater ability in dealing with railroads, (3) closer financial facilities with the banks and greater facility in obtaining new capital, and (4) superior ability in dealing with

organized labor. In addition, there were incidental advantages which were little thought of at the time the trust was formed but which are now being brought forward by their advocates as proof of their superior efficiency. Such advantages are the reduction of administrative expenses by centralizing offices and doing away with high priced officials, the saving in advertising, the saving in cross freights, greater advantages in pushing the export trade, and so on. These advantages were not seriously considered at the time the trusts were formed and the main reason, in my opinion, for their emphasis at this time is to draw away the attention of the public from the real reasons underlying the formation of these large combinations.

A second and controlling motive was the financial motive. By twenty companies competing with each other the value of each one of them was reduced because of that competition. If these twenty companies could be combined under one company, a New Jersey holding corporation, because this value reducing competition would be eliminated, their value would be increased, perhaps doubled. The separate companies could be bought for \$10,000,000 and sold for \$15,000,000 or \$20,000,000, because in the combination these plants were more valuable since presumably the profits would be larger in the difference between \$10,000,000, the cost, and \$20,000,000, the new supposition value, wherein lay a large profit which promoters, underwriters and bankers could divide. In consequence of the dominance of this financial motive, because the parties interested were primarily concerned in making a profit by marketing securities, and had only an indirect and often a remote interest in the future of the companies which were so easily formed and floated, they included in their combinations large numbers of plants which were not only unnecessary but whose operations were so wasteful that they have been since abandoned. In short, the trusts do not represent a natural growth. They are big businesses, it is true, but theirs is a forced, an unnatural bigness. The motives which inspired the formation, to repeat, were not economic and industrial but financial and pecuniary.

The best illustration of the reasons and motives underlying the inception of the industrial trusts is seen in the formation of the United States Steel Corporation. The formation of this company was forced by the threat of Mr. Andrew Carnegie to wage

war upon his rivals in the steel industry. It was formed with the avowed intention of buying out Mr. Carnegie, who was unwilling to take a mortgage on his own plant in payment for his interest therein, but was willing to accept a mortgage on sixty-five per cent of the steel industries in the country in payment for his holdings in the Carnegie Steel Company. The motive of eliminating competition which is so conspicuously evident in the formation of the Steel Trust was present in the minds of those who formed nearly every one of the industrial combinations. This fact has been brought out clearly and conclusively again and again in various investigations. It is as well established as any fact in recent economic history. It is no longer open to question.

The American people are now asked to decide whether these combinations, formed with the avowed intention of restricting or eliminating competition, are to be continued, or whether, in so far as they possess the power to oppress the public, they are to be destroyed by the enforcement of the Sherman law. If the Sherman law is to be continued in force, the large, dominant, monopolistic trusts will be broken up. Under the recent decisions of the Supreme Court the power to oppress the public is clearly regarded as sufficient reason for depriving a company of monopolistic power by dissolving it. Combinations which have been formed for business rather than financial reasons, whose constituent elements complement each other and result in real saving, combinations which are not conspiracies to oppress the consumer, which do not have the power to monopolize trade, have nothing to fear from the Sherman law as interpreted by the Supreme Court. Monopolistic combinations, however, either potential monopolies or companies actually engaged in monopolistic practices, are put under the ban by the oil and tobacco decisions.

The question now is—Is it worth while so to amend or supplement the Sherman law as to continue these large combinations, because of the supposed industrial advantages to the public which they possess, or is it expedient that they be broken up? The solution to this question should turn on the industrial efficiency of these combinations. Here the evidence is entirely negative. There has been no proof brought forward that the trust is a superior form of business organization. All the evidence available, with a few exceptions, points to the opposite conclusion. In so far as these

companies have been exceptionally profitable, as in the case of the oil and tobacco combinations, their profits have been shown to have resulted very largely from the monopoly advantages which they possess. The profits of the tobacco trust, for example, were shown by the Bureau of Corporations to be very large in those lines, such as cigarettes, where they enjoyed a practical monopoly, while in cigars, a business still open to competition, the profits were quite moderate. For the most part, however, the trusts have not been exceptionally profitable. During the decade, 1902-1911, a period of the greatest prosperity and the most remarkable advances in every line of production which this country has ever seen, the combined profits of twenty-eight of these companies, making no allowance whatever for necessary depreciation on their plants, increased only thirty-seven per cent. This is a sorry showing when compared with the general business record during the same period. The prices of the common stocks of the trusts, that portion of their capitalization which represented the economies of combination are, as a class, very low. With but few exceptions these companies have been unable to realize the expectations which were formed concerning them. Even the company which started with the greatest natural advantages, the United States Steel Corporation, now that the Standard Oil Company has been dissolved perhaps the largest and strongest manufacturing corporation in the world, has not made an especially strong showing. Its common stock has not yet reached an investment position. Compared with the successes of the large railroad companies, successes which have been won under most adverse conditions, its showing is most disappointing.

A single illustration will serve to enforce this conclusion. Ever since its formation the United States Steel Corporation has been given a free hand in its price policy. It started its career by a sweeping victory over organized labor. It included the best plants in the country, among others, the Carnegie plants, the finest and best organized machine for the production of steel in the world. The officials of the company included the best men among the constituent companies. The Steel Corporation was a completely integrated concern, owning all the materials of production, owning also the railroads and boats by means of which these materials are assembled at the mills. The Steel Corporation controlled the supply of iron ore, and was able to maintain ore prices at a high level to

many of its competitors. It has enjoyed from the outset the countenance and support of strong financial interests who have been able to throw to it a large amount of business. Its financial resources have been enormous and it has never been cramped for money with which to build and improve. Indeed since its organization it has spent over \$400,000,000 on new construction. It has assimilated a number of strong companies such as the Union Steel Company and the Tennessee Coal, Iron and Railroad Company. The Steel Corporation has at all times enjoyed close and friendly relations with its competitors. There has been little price cutting in the steel trade until the past year. And to crown all these remarkable advantages, seven years of its history have been years of enormous and rapidly growing demand for steel which the corporation has supplied at large profit.

The Pennsylvania Railroad is perhaps the largest railroad corporation in the United States. It possesses, however, no such commanding position in the field of transportation as does the Steel Corporation in the field of industry. During the period, 1902-1911, the Pennsylvania and its subsidiary companies have spent almost as much on new construction as the Steel Corporation, but much of this new construction is not yet profitable. Much of it will never be largely profitable. The Pennsylvania has not been able to make material advances in its rates. Its cost of operation, owing especially to the incessant pressure of organized labor, has gone steadily upward. In many respects, however, it is fairly comparable with the Steel Corporation as to size and strength. The Pennsylvania, however, is an efficient industrial machine. It is an organic unit, not a combination of competitors. It is a growth, and not an agglomeration. Let us briefly compare the financial results which the Pennsylvania has achieved with those accomplished by the Steel Corporation. From 1902 to 1911 the gross income of the Pennsylvania system east and west of Pittsburgh increased from eighty-three millions to one hundred and twelve millions, or about 35 per cent, while the gross income of the United States Steel Corporation increased from one hundred and forty millions to one hundred and fifty millions, or 7 per cent. The comparison may be considered unfair, because 1911 was a worse year for the steel industry than for the railroads, but if we go back to 1907, the banner year for steel as for railroads, we still find a marked dif-

ference in the gain in income of the two companies over 1902, and the difference is in favor of the Pennsylvania.

What is true of the steel trust will be found to apply to most of these huge, clumsy and unwieldy combinations. They are not efficient. Their expected profits have not been realized. It would not be unfair to describe many of them as sore disappointments.

Why then should these trusts be continued? What is to be gained by keeping them alive? What business interests will suffer as a result of their dissolution? No plants will be closed, no men will be thrown out of work. A return to the old conditions of cut-throat competition is exceedingly unlikely. Railroads compete, but they do not engage in rate wars. And it is a fair presumption that when the large combinations are broken up into smaller and more manageable units their efficiency of production will be largely increased and the costs of production lowered.

In support of this conclusion we have the recent experiences of the oil and tobacco companies, where the large consolidations have been reduced to a number of smaller though completely equipped concerns. In neither case have the stockholders of these corporations suffered any damage. On the contrary the combined prices of the oil stocks and the tobacco stocks have shown material gains since these combinations were broken up. If then the trusts were not formed to realize any ultimate economy of production; if they were formed with the idea of making money by selling stock representing the capitalization of the profits of restricting competition and maintaining prices; if they gathered together under the control of these New Jersey corporations, numerous and widely scattered plants, often with no relation one to the other, save the relation of monopoly; if they were formed for financial and not for economic reasons, why should not the American people give their sanction and countenance to the movement which is now in progress to break up these corporations into smaller concerns?

COMPETITION: THE SAFEGUARD AND PROMOTER OF GENERAL WELFARE

BY GEORGE F. CANFIELD,
Professor of Law, Columbia University.

Competition in economic discussion means competition in trade. To this I shall confine my attention, although the law of competition applies generally to all human activities, just as the law of gravitation governs universally the physical world. When two or more persons are engaged in the same kind of business of production or trade, or in different kinds of business, which, although different, are mutually competitive, we have actual competition between them, each competitor measuring his strength against the other. When one person is engaged in any particular business, but there is an opportunity for another one or more to engage in it, we have potential competition. The effect of potential competition is substantially the same as that of actual competition. In each case the competitor, or the sole trader who is subject to potential competition, must exert himself to maintain himself in the competitive struggle. This in itself is an important advantage, for many men, if not most men, contrary to the belief of our socialistic friends, exert themselves only when they are obliged to do so. But there is a further advantage, for under the stimulus of the rivalry the competitor or sole trader will normally do more than merely try to maintain himself. He will exert himself to accumulate a surplus over and above what is necessary for his maintenance and support. He will exert himself to achieve a positive success and to excel his rival. The effect, therefore, of competition is to quicken the energy, to develop the powers and to render more efficient the action of each party to the competitive struggle, and, so far as it has this effect, it is wholly and unqualifiedly beneficial. To it the world is indebted for the inventions, improved processes of manufacture, improved organization of industry and trade and the great energy with which industry and trade have been prosecuted—all of which has rendered possible the enormous increase in the wealth of the world during

the last hundred years. The result of this vast increase of wealth is that, notwithstanding the enormous increase in population during this time, the general physical and material comfort of the people has been increased, and mankind, collectively and individually, possesses and enjoys to-day more of the good things of life than was ever possessed and enjoyed before in the history of the world. This may be said, although unfortunately it is also true that there is still a vast mass of poverty, suffering and crime which afflicts mankind. Religion and modern philanthropy are dealing with these evils sympathetically and hopefully, and with increasing efficiency as philanthropy becomes more practical and business administration becomes more philanthropical, and as there is increasing co-operation between philanthropists and men of affairs.

Competition is also beneficial, in so far as the object of it is promotive of, or at least consistent with, the public welfare. The direct object of trade is the production and distribution of wealth and the enrichment of those who are engaged in it. This object is not only consistent with the general welfare, but is, in general, promotive of it, because the public welfare, from the point of view of economics, depends upon the greatest possible production and distribution of wealth. The fact that the competitors in trade are governed by selfish motives does not necessitate any qualification of this statement. It is true of trade, as it is of every other competitive struggle, that on the whole and in the long run he succeeds best and best serves his own interests who best serves the interests of his fellowmen. The element of selfishness, therefore, so far from being a detriment, is an advantage and a help. Considered, then, with respect to its effect as an incentive of human activity and as an efficient cause of the enormous increase of our material wealth, competition in trade during the last hundred years has been a potent agency, perhaps the most potent single agency, in the development of our civilization as it exists to-day.

But, while recognizing this, we must not close our eyes to the evils that may be involved in competition. It is a positive evil, in so far as its object *must* be obtained by unfair means. It is a possible evil, in so far as its object *may* be obtained by unfair means, and it of itself induces the use of unfair means for the accomplishment of this object. We all know that persons may compete too intensely, either for their own good or for the general welfare. This

is more likely to be the case where the rewards and prizes to be won are very valuable. Indeed, the intensity of the competition is likely to be proportioned to the value of the rewards and prizes. A man will make greater efforts to attain the presidency than he would to attain the position of a town clerk or sheriff. A captain of industry, lured by the prospect of controlling millions, will work with greater zeal and enthusiasm than a village blacksmith. It is, therefore, natural that in a country like ours, with its great natural resources and its great opportunities for acquiring wealth and power, competition should be of the keenest kind and should lead to abuses. It must be conceded that it is rather a tendency of Americans to do things to excess. We pursue our business, as well as our sports, rather too strenuously. The spiking on the baseball field and the slugging on the football field are an exhibition of this tendency, and they have their counterparts in the unfair competitive methods and tactics used by strenuous traders and strenuous politicians to achieve the objects of their efforts. Among these methods must be included the cutting of prices below the cost of production or even below the limit of a substantial and attractive profit for capital. It seems to be too generally assumed that the chief merit of competition lies in the reduction of prices. The chief merit of competition in my opinion lies in its stimulating effect upon human energy, with the resultant expansion of trade and increase of our material wealth, but it cannot have this effect when competition has been carried to the point of destroying all possibility of profit for capital. The inevitable result of this is restriction of trade and decrease in production—a disaster alike for capital and labor. In these days especially, the importance of the simple truth must be insisted upon that a good living profit for capital is quite as important as a good living wage for labor. Any legislation, therefore, which forbids under penalty of the criminal law every agreement or understanding for the maintenance of a uniform standard of reasonable prices is ill-advised, and, if actually enforced, must tend to the destruction of our national welfare.

Notwithstanding, however, the existence of these evils which are incident to too intense competition—particularly in a country like ours with its vast opportunities—it can be stated with confidence that the law of competition during the past hundred years has, on the whole, worked wonderfully well and promoted the general wel-

fare to a marvelous degree. What the world would have been without its beneficent influence may be learned from a study of the conditions which exist when there is no competition. The negro under the institution of slavery, the inefficient laboring man or political office holder, who relies not upon his own efforts but upon the support of his labor union or his political ring, and the idle inheritor of wealth, relieved from the necessity of the struggle for existence, demonstrate very clearly what competition has done for the world and what the world would have been without it.

Such being the case with respect to the effect of competition in the past, it becomes important to inquire whether conditions have so far changed that it cannot be depended upon to work well during the generation before us. It appears sometimes to be assumed that modern conditions have substantially nullified this law, and that in the years to come we must look to something else to safeguard the interests of the people. If this were really true, the situation would be a grave one. Let us, therefore, see how far this assumption is correct.

It cannot be denied that outside of the domain of the monopolistic trusts actual competition exists and is effective substantially unimpaired and unrestricted as heretofore in all fields of human activity. It exists among small manufacturers and retail distributors. It exists among jobbers and among professional men, lawyers, doctors, teachers, engineers, civil, mechanical and electrical. It exists among manufacturers and distributors conducting the operations of production and distribution upon a large scale, notable examples being the cotton manufacturing industry and the department stores. Indeed, it exists wherever there is more than one person engaged in any business. In the field of telegraphy, for example, there are practically only two great companies—but there is active competition between them. During the twenty-year period 1890-10 the number of persons engaged in manufacturing and in distribution, as recorded by Bradstreet's, increased sixty per cent, from 1,000,000 to 1,600,000—of which a very large proportion have a capital of \$25,000 or less—and during the same period the population increased from 63,000,000 to 92,000,000, or about forty-six per cent. In other words, the number of people engaged in trade increased relatively faster than the population, and that, too, during the period succeeding the passage of the Sherman Anti-Trust Law, during which,

under the fostering stimulus of that law as originally interpreted by the United States Supreme Court, monopolistic trusts appeared to grow and develop faster than ever. But, notwithstanding the growth of the trusts, the small capitalists continued to grow and thrive also. Could there be more convincing evidence than this of the vitality of the individual and of his ability to maintain himself against the power of combination and great capital? Indeed, it would seem that what the small trader and capitalist—at all times and in all countries the special object of care and solicitude on the part of self-constituted tribunes of the people—have to fear rather more than the crushing power of capital is the crushing weight of benevolent legislation.

Again, it cannot be denied that, although for the time being a particular field of industry may seem to be exclusively occupied by a monopolistic trust and there is little actual competition left, potential competition may exist and continue to act as an efficient regulator in the interests of the people. Outside of the domain of the public service corporations, the combinations which have most closely approximated to practical monopolies in this country have been the Anthracite Coal Trust, so-called, by virtue of its ownership of the coal mines, the Standard Oil Company, by virtue of its ownership of the pipe lines, and the United States Steel Corporation, by virtue of its ownership of the iron ore mines and the railroads connected with them. But even all these combinations have been subject to some competition, both actual and potential. Anthracite coal and oil compete with each other and with soft coal, gas and electricity, and there is, in addition, actual competition between the members of the Anthracite Coal Combination themselves and also between the larger operators and the smaller independent producers in all things except as to prices. In the steel trade there are many active competitors with the United States Steel Corporation, and within recent years, the Midvale Steel Company, starting with a small capital investment, has developed into a large and strong corporation.

If, however, there were practically no external competition, actual or potential, there is still unlimited opportunity for competition within the combinations themselves, that is, competition among the officers and employees. Who are at the head of these corporations? Not the favored sons of fortune, of social position and

influence, but for the most part men who have risen from the ranks, men of demonstrated capacity and fitness for the duties and responsibilities which the management of these great enterprises involves. It would seem that never before in the history of the world was there so much chance for merit. This is not to say that the millenium has arrived and that merit now always receives its proper reward. I am speaking only relatively, but if the chances for true merit under modern conditions are relatively better than they used to be, that means progress, and we should be content with that, unless it can be shown that the chances can be still further improved by human laws. The evil in the situation here, as elsewhere, is not that competition has been suppressed or that the door of opportunity is closed, but that for those who enter the competition is rather too severe. Too much seems to be expected and exacted of the managers of capital and often too little consideration is shown in setting aside one man for another deemed more efficient.

When one contemplates a combination of capital so large and powerful as the combinations above referred to, it is perhaps natural to think that in effect they have suppressed, so far as their particular fields are concerned, the law of competition, but, upon closer analysis, this appears to be an error. It is perhaps natural for the human mind to conceive of such a combination as a monster prowling about like a wild beast and devouring everything that comes in its way. But does not this conception involve a serious error? In the first place, it is not really the interest of the monopolist to devour and destroy. It is his interest to develop as large a trade as possible, and this is only possible by serving well the public, both in the quality of his service and in the prices which he charges. An examination of the prices during the period 1896-1910, as published in an article in the *Outlook* on March 12, 1910, revealed the extraordinary circumstance that during that period the prices of crude farm products advanced from fifty to two hundred and fifty per cent, while steel billets advanced only thirty-five per cent, steel rails were unchanged, refined petroleum was only slightly higher, and sugar, steel beams and nails were actually lower. And, in general, it appeared that the prices of commodities supposed to be controlled by the trusts rose relatively much less than prices of the products of the farm. There are wise and unwise captains of industry, but the wise ones, and they are growing wiser and more numerous

every year, know well that he who serves best the people as a whole serves best the enterprise which he represents.

In the second place, these great corporations, although in legal contemplation they are entities separate and distinct from their stockholders, are in effect and in point of substance simply groups of individuals. Their shares of stock are dealt in upon the markets of the world and may be purchased by anyone who has \$100 more or less to invest in them. Within the past twenty years, these industrial stocks have been coming to be regarded more and more as investment securities. High-class industrial preferred stocks now sell upon the same basis as standard railway stocks sold forty or fifty years ago. Within the last four or five years there has been a notable increase in the incorporation of smaller companies and the distribution of the preferred stock of these companies among the smaller investors of the country. It is to be hoped that this process will go on, and it will go on, unless the government by its interference with business breaks down the prosperity of the country. The logical outcome of this process will be a very wide distribution of these stocks, so that a very much larger number of people will be directly interested in the prosperity of these industrial companies. When that outcome has been realized, then these great companies will have the character of great co-operative enterprises, and the attitude of the people towards them will necessarily change. Proof of this is found in the present attitude of large numbers of persons with respect to the policy of the federal administration in the prosecution of the trusts—a policy, by the way, inaugurated by the preceding administration and only logically and consistently carried out by the present one. The stock of the Standard Oil Company and the stock of the American Tobacco Company were never widely distributed. The prosecution of these companies was, therefore, hailed with general enthusiasm throughout the country. On the other hand, the stock of the United States Steel Corporation is very widely distributed. I have talked with many persons, men and women, who think that the Standard Oil Company and the American Tobacco Company deserved all they got, but they cannot quite understand why an attack should be made upon such a benignant institution as the United States Steel Corporation. The explanation is that as soon as you acquire a direct interest in one of these monsters, he very quickly smooths his grim

and wrinkled front and appears as a very kind and gentle sort of animal.

There are other errors which it seems to me deserve attention. In comparing economic conditions, present and past, it may seem that before the advent of the large corporation there were unlimited opportunities for the independent producer or trader which no longer exist for the present generation. As we look back, we can see what immense opportunities there were during the past generation. As we look forward, we may not see similar opportunities, but who will say that they do not exist? There are opportunities in every generation which are only visible to the few. It is only the few in each generation, men of capacity and alertness, who make use of the opportunities which that generation presents. Not many years ago the Union Typewriter Company was by many regarded as a trust or monopoly, and it is quite conceivable that the managers of that enterprise may have been apprehensive of being prosecuted by the federal government under the Sherman Anti-Trust Law. However this may be, to most men it probably seemed impossible to organize another corporation and to make a success of it in this particular line of business. But within the past five years another great corporation, the Underwood Typewriter Company, has been established and is now doing nearly as much business as the Union Typewriter Company itself. Who will say that these two companies are the final developments in their field and that another company may not be organized and achieve a success surpassing either of its predecessors? And note that if the Union Typewriter Company had cut prices, this new competition would never have entered the field. In like manner, if the condition of demoralized prices which existed some years before the formation of the United States Steel Corporation had continued to exist, the Midvale Steel Company, I should suppose, would have been an impossibility. Similarly the maintenance of prices by the Western Union Telegraph Company made possible the competition of the Postal Telegraph Company. And, in general, it may be stated that in order to prevent the suppression of competition and to keep it active and effective it is important to maintain prices at a level sufficiently high to attract new capital into the competitive field.

Finally, it must not be lost sight of that, although some particular field of industry may seem to be exclusively occupied by

monopoly, it does not follow that the door of opportunity has been closed to the ambitious young men of this generation. Since the discovery of the north pole and the south pole, the glory of a Peary and an Amundsen is not attainable by any other person. That particular opportunity is gone forever. Preceding the presidential nominating conventions, the door of another opportunity is open for many an ardent patriot, but after the conventions have registered their decrees, this door is closed—not forever, but for another period of four years. It may be that in the steel trade present opportunities are quite different from those which were open in the days when Carnegie as a young man went to Pittsburgh and that his amazing success in that field may not be achieved by any other person. It may be assumed that in other lines of industry there is practically no chance to build up a new corporation equal to those already dominating the field; but from generation to generation, as existing opportunities are availed of and perhaps cease to exist any longer, other opportunities arise and present themselves, and it can, I think, be stated with confidence that, notwithstanding the growth of monopoly in this country, we have had during the past generation and are likely to have during the coming generation vastly more opportunities than were open to our ancestors of many generations ago who, nevertheless, prospered well and were more content than we are.

Let it not be inferred from anything I have said that I have intended to suggest that the law of competition, beneficent as it has been in the past and as it is likely to be in the future, is all-sufficient as a safeguard to the national welfare. And let it not be inferred that I have intended to suggest that this natural law of competition may not wisely be supplemented by some man-made law to protect and maintain competition against monopolistic power. My object has been simply to call attention to some considerations which ought to be taken into account in diagnosing economic evils and in deciding upon the remedy. To deal wisely with economic problems is always a difficult and delicate task. You cannot deal wisely with them, if you act precipitately. Fortunately, there is no need of precipitate action. There is time for deliberation, for the patient investigation of facts and the patient consideration of them. No more useful service can be rendered by this Academy than to impress upon the public the importance of deliberation, of caution and of conservatism in dealing with these grave problems.

PUBLICITY OF ACCOUNTS OF INDUSTRIAL CORPORATIONS

BY MILES M. DAWSON,
Counsellor-at-Law and Consulting Actuary, New York.

Citizens of the United States are facing the proposal to undertake national regulation of all corporations doing an inter-state business. It is proposed that this extend to all their operations, i.e., be not confined to their inter-state business. This is to be secured by requiring them, as a condition to license to do an inter-state business, to incorporate under a federal charter, thus making themselves subject to the control of congress in all respects. Thereupon, a commission is to supervise and regulate the company's operations.¹

There is, of course, much opposition to the inauguration of such a plan. It is certainly a great departure from the traditional character and limitations of our general government. Its constitutionality is denied; its tendency toward centralization condemned. Its efficiency also is questioned, in that even the most tyrannical of bureaus could hardly maintain espionage upon all the industries of the country.

Yet all who earnestly and even strenuously oppose, must concede that a remedy for certain glaring evils must be found and that, if no other appears, the American people will accept and adopt national supervision.

¹ The following is this program as announced by Mr. George W. Perkins, in *The New York Times*, March 15, 1912:

"First—Create at once, in or out of the Department of Commerce and Labor, a business court or controlling commission composed largely of experienced business men.

"Second—Give this body power to license corporations doing an inter-state or international business.

"Third—Make such license depend on the ability of a corporation to comply with conditions laid down by Congress when creating such commission and with such regulations as may be prescribed by the commission itself.

"Fourth—Make publicity, both before and after the license is issued, the essential feature of these rules and regulations. Require each company to secure the approval of said commission of all its affairs, from its capitalization to its business practices. In the beginning, lay down only broad principles, with a view to elaborating and perfecting them as conditions require.

"Fifth—Make the violation of such rules and regulations punishable by the imprisonment of individuals rather than by the revocation of the license of the company, adopting in this respect the method of procedure against National banks in case of wrongdoing."

The real question, then, is whether there is another and a better plan; for assuredly we are not going to do without some plan.

Publicity of the accounts of corporations, which President Hadley, of Yale University, put forward more than a decade ago, as a way out, is involved in this more extensive program. Before venturing to adopt the whole of it, therefore, we may well consider whether effectual publicity alone might not answer as well or, indeed, better.

The publicity required is the simple, straightforward, intelligible type, covering essential matters so that the public may judge. Where autocratic, arbitrary regulation is found, the publicity features, while manifold and complex, are rarely illuminating and usually cause the public to lean more helplessly upon the supervising authorities.

It must have been considered that long study of the operation of these plans in connection with insurance and especially life insurance would perhaps enable me to lay before you some facts that would prove pertinent and applicable in respect to industrial corporations; else I should not have been invited to address you.

As regards life insurance, for instance, we have had about fifty years of state supervision in this country, relieved in recent years by a modicum of true publicity; while in Great Britain they have had about forty years of publicity, unaccompanied by supervision.

Our laws regulating life insurance were inaugurated in 1858 by the appointment of commissioners in Massachusetts to report upon the conditions in general. The very first act of this commission was to adopt and enforce an artificial and arbitrary method of computing the contingent liabilities of companies under running policies which later, upon the authority of America's greatest actuary, was the chief factor in causing the ruin of many American companies that were in fact solvent and need not have failed.

The idea of suppressing practices, which were very rightly condemned, by means of vigorous supervision thus found lodgment; and the ablest and most active of the commissioners was continued as sole commissioner. Soon afterward New York provided for a superintendent of insurance. Other states followed with laws regulating life insurance and providing for a commissioner or superintendent.

One thing is at once noteworthy: The failures of American

companies followed the introduction of supervision and, as said, was largely due to it, while the failure of British companies preceded the publicity measures of the government and there have been none or virtually none since.

As regards solvency and strength, the British idea has been to require reports, clearly stating the facts, thereby giving due advantage to the strong and prosperous, but encouraging the managers of weaker companies to work out their salvation by the best means available. The American method, always resulting in case a company gives up after a struggle, in a reflection on the supervising department for not closing it sooner, encourages the spirit of distinct and even marked favor for the old and strong companies and of disfavor for the new and small companies.

Thus for years the interpretation of our reserve laws by supervising officers actually prohibited the successful launching of new companies, thus automatically giving to a constantly diminishing number of companies a virtual monopoly of the field. This has been relieved in some states as to life insurance, but is yet true in all of them as to fire insurance. A great object lesson in the desirability of room for the exercise of expert judgment in this matter, which has been a cardinal feature of the British Act, was recently given in New York where, by reason of a lower standard to test mere solvency, as distinguished from the right to do new business, a large life insurance company was saved from a receivership and in a year or so its entire impairment restored. Yet such was heresy in America a few years ago; and is not provided for even now in other states.

As regards strength and solvency, then, the effect of the supervision method generally has been to make conditions hard or even impossible for the new and small companies and, by applying an unyielding and often wholly unsuitable reserve standard to them, drive them out of existence; while publicity has nursed them when weak, and, by affording means for suitable and significant comparisons, has encouraged them to strengthen themselves.

A feature, scarcely if at all less important than solvency, which is sought to be safeguarded by these legislative measures, is that companies really perform good service for the public, i.e., as regards life insurance, for instance, supply insurance at the least cost compatible with safety and otherwise on the best terms.

The earliest work of the Massachusetts commissioner, after

setting up a standard of reserve, was to advocate and ultimately to secure legislation requiring Massachusetts companies to give (in the form of keeping the insurance in force for the time it would pay for) a value equal to a large part of the reserve, upon surrender or lapse. Such relief was undoubtedly grievously called for, since companies were actually forfeiting fully paid-up dividend additions upon non-payment of premiums. The commissioner and the legislature, of course, did not consider publicity a cure; therefore, mandatory legislation.

The Massachusetts companies complied, but most unwillingly; and, after some years, they succeeded in changing this, first, to guaranteed cash values and, later, to a choice, by the company, to provide for paid-up or extended insurance, with an option of cash values. It was many years before automatic extended insurance was generally given; and when it was, this was due to the energetic competition of a company, the officers of which believed in it and, therefore, offered it, wholly without legal compulsion.

As regards cash surrender values, also, it was fidelity to the feature as a matter of principle, on the part of two companies in the United States and one in Canada, professionally advised by this Massachusetts commissioner, and not to companies, acting under compulsion of law, that finally brought it into favor.

This took a long time, also—a very long time—during which a monstrous scourge of misrepresentation, deceit and fraud fell upon the United States, before the right to surrender value was conceded. This scourge, singularly enough, proceeded from a plan to *forfeit* reserves, i.e., to allow nothing upon surrender or lapse. The outcry in order to secure surrender value legislation had, of course, emphasized the “outrageous” gains from forfeitures. So “Tontine” was introduced with its estimates of impossible gains to be made by taking a forfeitable policy, continuing it in force for ten, fifteen or twenty years and so sharing in the reserves forfeited by others. These were urged upon the public by agents, under offers of commissions which, after a time, represented a waste greater than any possible gain from this source.

Whatever may be thought of the forfeiture system, itself, under which from fifty to sixty per cent of the insured lost their equities, there can be no question that the campaign of lying estimates, distorting life insurance into a “hot air” speculation, constitutes a continuing

reproach upon the good name of American life insurance, a reproach not yet removed in many of the states.

The degree of it may be judged from this: Before the Armstrong Committee, we showed that three of the New York companies, making big estimates of returns on "tontine" policies, were so wasteful that they were earning virtually nothing for them; that is, they were charging for policies which were really non-participating, full-participating premiums, about twenty per cent higher than non-participating, and were hiding this by lying estimates. The extent of it may be judged from this: The officers of the New York company which is generally considered to have come out best in the investigation, were compelled to acknowledge that a rate-book, showing actual results on such policies, had been withdrawn and another with materially higher "estimates" supplied, because the agents had insisted they could not sell the insurance by presenting the facts.

This grew up under a system of supervision of increasing severity and complexity. In Great Britain under publicity only, the sole sinners in this regard were the branches of our American companies, to deal with which their publicity measures, planned only for their own home conditions, were then inadequate. On the part of British companies, since 1870, "make good" has been the rule, and unrealized estimates a negligible exception.

In this important regard the publicity required in Great Britain was merely filing with the "Board of Trade," a government department, full information as to "bonuses" i.e., dividends to policyholders, giving examples of the rates of bonus and the factors or method by which they were arrived at. No such requirement was made in the United States prior to the Armstrong laws of New York, enacted in 1906, i.e., nearly fifty years after the advent of supervision.

The one unfortunate omission from the British "bonus" requirements was provisional accounting as to accumulations of surplus prior to completion of the dividend period. The absence of this, due to the fact that British companies "divided" their surplus at the end of fixed periods among policies of whatever duration, while the "tontine" plan called for "apportionment" each year, but only to policies completing their periods, permitted a company to run on, using its lying estimates up to and beyond total failure to realize them. There, as here, there was no exposure of that.

This was sought to be remedied by the Armstrong laws also,

which provided for "a statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred dividend periods longer than one year for all plans of insurance and all durations and for ages of entry as aforesaid (i.e., 25, 35, 45 and 55). . . ."

The New York department, however, though for the last three years deemed strict and even stringent in supervision, has never enforced this publicity feature, so absolutely essential to the protection of holders of policies of a "closed" class, i.e., a class no longer recruited. The failure to enforce was due to resistance and assurances that "it cannot be done," which statement is absolutely false.

This illustrates a favorite and almost unavoidable attitude of supervising state officers, viz.: "It is our business to supervise," with the result that the most important things, viz., the essentials of publicity, are lost sight of in the performance of arduous, manifold and complex duties, usually leading nowhere.

The two features of the Armstrong laws which have most made for improvement of the service to the public in quality and in cost, and that there has been marked improvement is shown by the fact that the rates of annual dividends to its policyholders paid by the oldest and largest company were more than three times as high in 1912 as in 1905, are these:

1. Publicity regarding rates of annual dividends.
2. Publicity regarding expenditures for new business, tested by a certain reasonable standard for the same, based upon experience and then introduced for the first time.

The first of these revealed unescapably whether or not a company was supplying life insurance at a reasonable cost; the second laid bare the chief among the evils which rendered the insurance costly.

"In what way may these facts conduce to a solution of the problem of regulating industrial corporations?" is a question which may well be asked.

Industrial corporations are subject to publicity requirements in Great Britain, similar to those applying to life insurance companies, though not identically the same. Though industrial development is more advanced there than in any other country, monopolistic manipulation of prices and the like are virtually unknown.

The industrial corporation problem seems to involve the same issues, fundamentally, as life insurance, but in a somewhat simpler

form. Life insurance companies are selling their promises to pay, of varying value because of difference in terms of contracts and in strength of companies; while industrial companies deal in material products, the value of which is known to buyers and is independent of the corporation's financial status. But their stocks and bonds are offered for investment, which leaves the situation much the same.

The aim of regulation of industrial corporations, then, is very similar to that of life insurance regulation, viz.: To promote solvency and protect buyers of stocks and bonds against imposition, by requiring simple and correct statements to be filed; and to encourage the performance of good service at moderate prices and discourage the contrary course.

That these things can as certainly be accomplished regarding industrial corporations, by wise publicity requirements, as in life insurance, is both obvious upon the face of it and also clearly shown by experience in Great Britain where false statements about corporate affairs are as infrequent as they are frequent here and commodities are supplied at lower prices than anywhere else in the world.

The door to the accomplishment of these things stands invitingly open, also. All these corporations are reporting to the comptroller of internal revenue now, every year. These reports can be classified and made public, whenever that course is decided upon. Were this done, in a perfectly simple and intelligible way, it would at once reveal both the corporations which are dangerous to investors, because not "making good," and those which are exacting an excessive profit by reason of monopolistic practices.

Publicity in the former regard would protect the public against the foisting upon them of stocks and bonds in losing ventures and would encourage better business practices and the strengthening of such corporations.

Publicity regarding excessive profits might be a complete cure in and of itself. If not, it would perhaps serve to indicate the source of such profit, as, for instance, by working through subsidiary corporations, etc., and thereby to give a hint how the evil may be reached. It might also show that the federal power of taxation should be invoked, to make extortion unprofitable by taking a heavy toll for the nation.

The sole penalties, then, would be:

1. Punishment of officers for making false statements. This

should apply also to circulating false statements. Punishment should be inexorably inflicted, usually by imprisonment.

2. Punishment of corporations and of officers for violation of statutes, both state and federal, revealed or indicated by the accounts as filed.

3. Heavy taxation of monopoly profits.

Our condition as regards reliable information concerning corporations is at the present time exceedingly unfortunate. There is no bureau to which the people of the country, whether consumers or investors, may turn to ascertain the financial operations and condition of the various corporations doing business here. Of course, as we have no provision for publicity of accounts save as to banks, trust companies and insurance companies, it follows that the wildest falsehoods are at times circulated about corporations for the purpose of depressing or booming their shares. The mendacity of the American promoter, whether engaged in floating a new corporation or in selling further securities of older corporations, is proverbial; and the honorable standard of "make good" which has been set by our strongest banking house in recent years is only beginning to have its influence to suppress such practices. We need, unquestionably, and that on a national scale, not so much the features of the "British Stock Companies Act," which prescribe the powers of corporations and make provisions for their incorporation uniform throughout Great Britain, but those features which require that a correct account be filed with the Board of Trade of London, and that every statement made by every such corporation, its agents, promoters, officers or directors concerning its affairs shall truly represent the facts.

It is perhaps doubtful whether it would ever be necessary to make use of the federal power of taxation, which, according to the precedents established by the courts, is limited only by the express limitations of the constitution and may be utilized within the discretion of congress, even if the result be to destroy, if effective publicity were once introduced; but, notwithstanding, it is well that that power exists. The punishment of taxing the "unearned increment" of a swollen profit, derived from monopoly, is obviously one which "fits the crime." It would also act as a preventive, inevitably, since that which there is no profit in doing, will in the nature of things not be done.

Over against this utilization of the powers of the federal government, which it indubitably possesses under the existing constitution, there is set a program which is being urged first and primarily by leading officers of one of the largest industrial combinations of our country and, as a close second, by one of the candidates for president and many of his supporters, viz., that we shall set up bureaus, clothed with supervisory powers, scarcely if at all second to those possessed by various bureaus in the Russian, the Austrian and the German empires, and really much more dictatorial in type, as it is presented by these advocates, than anything to be found in those countries. A prime essential, according to their conception of the function of such a bureau, is that it may pass *in advance* upon the regularity and propriety of proposed corporate action, thereby telling "business" what it may do and may not do, and also that it shall have power to fix prices or at least to pass upon their reasonableness.

For telling "business" what it may do, there is the precedent of the action of the same candidate for president when he was in office, a precedent also involving the other leading parties who advocate this method; but, while it seems to have worked satisfactorily for all of them up to the present time at least, it has by no means been satisfactory to the rest of the people and indeed is generally condemned.

For fixing prices, the precedent is urged of the powers of regulating railway rates exercised by the Interstate Commerce Commission, subject to an appeal to the commerce court. This feature, which has been so intensely unpopular with the railway companies in the past, has, by reason of court decisions, fair enough at that, that the rates must not be "confiscatory," i.e., must leave a fair margin, been more favorably viewed of late.

It is difficult to see how the government, as regards railways and the like, or states and municipalities, as regards certain other forms of public service, can avoid accepting this responsibility; but, on the whole, the people of the United States are not so satisfied with the results that they would desire to extend this power to pass upon all prices. Instead, proper publicity of accounts would show, as to many of these public service corporations, a condition of affairs quite as little satisfactory both as to quality of service and price, as the condition in regard to any of the industrial corpora-

tions; for, as respects these public service corporations, there is a natural monopoly, which has been a fruitful cause of extravagant earnings and inflated values.

In other words, the precedents are not such as give any fair reason for believing that, even if these things could be effectively introduced within the letter and the spirit of our constitutional restrictions, they would attain the object which we have in view.

The creation at Washington, as a bureau of the central government, of a department with which shall be filed for publication, as well as for taxation purposes, complete, simple, intelligible and significant accounts of all corporations, with power of investigation if there is suspicion that false statements have been made, and with at least the menace that legislation levying a discriminating tax will be resorted to if a corporation so conducts its business as to extort an unfair profit for the service which it renders, would seem, therefore, to be a perfect solution of the serious problem now confronting us; and it is all the more desirable, because it will leave the enforcement of the criminal laws to the regular prosecuting authorities, the utilization of the civil laws by private parties to their own initiative, and the constitution of the United States without amendment or violation of its letter or spirit.

UNREGULATED COMPETITION IS DESTRUCTIVE OF NATIONAL WELFARE

BY ALLEN RIPLEY FOOTE,
President, National Tax Association, Columbus, Ohio.

Discussion for the promotion of the national welfare must have prosperity for its objective point.

National welfare must include the welfare of all sections, all classes and all individuals.

Individual prosperity is the fundamental basis for national prosperity. It is an infallible safeguard for national welfare.

The phase of national welfare to be considered is material well-being; therefore this discussion will deal with economic propositions. The material well-being of every individual, and of the state, is expressed by growth in wealth. Such growth can occur only as the results of profits earned by industry. Incomes from investments of all kinds have their origin in the profits of industry. For this reason profit-making is the fundamental basis for individual and national prosperity.

When a man works in isolation the entire product of his labor is unquestionably his property by right of creation. In the time when the work of production, and the exchange or distribution of products, was done by individuals, each operating upon his own initiative and for his own account, competition to gain the largest obtainable profit stimulated endeavor to its greatest possibility. This caused the production of an ever increasing variety of commodities in an ever increasing supply, the attempt to market which brought producers, or distributors, in sharp competition with each other, each attempting to win a possible profit by giving inducements to buyers in terms of payment or reduction in price, one or both. The effect of such competition was to stimulate trade and to keep prices, as a general result, at a point that would yield only a small profit for the producer and distributor. Under these conditions the axiom was formulated that "Competition is the life of business."

Competition became fiercer with every improvement in facilities

for the exchange of information and the transportation of persons and commodities. Increase in property was the material good sought by every competitor. To win this, the requirements of the moral law did not prevail. Sharp practice became the rule rather than the exception. The successful competitor was one who felt no restraint from conscience; who was most clever in outwitting buyers as to quantity or quality, or who was most successful in getting some special transportation advantage. On the other hand, the narrowing of the margin for profit compelled the production and sale of an ever increasing quantity in order to enable the producer to secure a necessary annual income.

These causes combined to compel individuals to co-operate for the purpose of cheapening production and transportation by increasing production and to afford each other protection against the methods employed by less fair competitors. Experience demonstrated that unregulated competition tended to destroy the power to make a profit, therefore regulated competition began to be commended as a means of promoting profit-making.

Regulation is always a restraint on freedom. The attempt to regulate competition as a means of promoting profit-making made it necessary to place restraints upon trade as a limitation on competition to promote profit-making.

Statutory laws came into existence and have been developed through a more or less well defined purpose to safeguard business methods and thus promote the general welfare. At the outset these laws were designed to keep competition absolutely free, that is, unregulated. To do this it was thought necessary to prohibit all restraint of trade and thus this prohibition became the objective point of governmental regulation. By following legal precedent instead of being guided by business experience, attempts at governmental regulation of business have been directed to a wrong objective point when invoked to safeguard unregulated competition in order that trade may be unrestrained. This led inevitably to making a prohibition of all restraint of trade a wrong objective point for governmental regulation. Political development along these lines prevented a recognition of the fact that unregulated competition and unrestrained trade are wrongly commended as necessary conditions for the promotion of profit-making as a means of developing individual and national welfare.

Political opinion, formulated into laws establishing and providing for a system of governmental regulation, designed to maintain unregulated competition by prohibiting all restraint of trade, is based upon economic theories and business methods as they were in the year 1776 when Adam Smith wrote the "Wealth of Nations." At that time steam and electrical power were unknown and had, therefore, not been utilized to expedite trade; the transmission of intelligence was then limited to the means employed for the exchange of commodities, and credits had not become a commercial commodity. In those days unregulated competition and unrestrained trade were accepted as necessary conditions for profit-making.

In the days of unregulated competition and unrestrained trade, individual profit-making was, as it is now, the true objective point of industrial endeavor and governmental protection. It is obvious, however, that business methods must change in order to keep in true adjustment with improvements in business facilities. When business facilities were limited to the use of physical power, by the utilization of animal-drawn vehicles and sail-propelled ships, unregulated competition and unrestrained trade were approved business methods. The power to co-operate, as may now be done, had not then been acquired. The utilization of steam and electrical power has removed the limitations imposed upon production, transportation and the transmission of intelligence by the use of physical power only, and has caused an enormous expansion in production, in the exchange of commodities, in the transmission of intelligence and in transfers of moneys and credits.

The power to co-operate was created by the utilization of steam and electrical power in the improvement of business facilities.

The more intelligent men become, the greater is their power and their desire to co-operate. Co-operation is possible between civilized men only. There is no industrial or commercial co-operation between barbarians; they have no desire, ability or power to co-operate, nor do they possess facilities which render co-operation possible.

Co-operation between civilized men is a life-giving necessity for the development of individual intelligence, character and ability. It is a means by which the least capable can acquire intelligence and share in the profits made possible by the skillful management of the most capable. It is not socialism. It is a natural and an

intelligent development of individualism because it protects, aids and develops individual interests in ways that can never be acquired by any person working in isolation.

Desire, ability and power to co-operate are natural products of intelligence. They are born with its birth; they grow with its growth; their application to business methods is its highest manifestation.

Every improvement in business facilities renders the utilization of the power to co-operate imperatively necessary in order that the development of economic efficiency may be unrestrained.

Every action guided by knowledge, every mechanical device, every form of organized associated effort that tends to promote economic efficiency opens a way in which individuals may acquire wealth through profit-making. Economic efficiency, not unregulated competition nor unrestrained trade, is the true promoter of individual profit-making.

The law of economic efficiency is the cohesive force that induces, compels and maintains co-operation between men by combining them into organized business units capable of handling the limited business of communities, isolated plants, mercantile and banking establishments, and then forcing co-operation between such organized units by creating multiple business units, such as combines and trusts, capable of handling the business of states, of the nation, and of the world.

Production resulting from the work of one man, operating in isolation, results from a co-operative use of brains and muscles. As a general proposition such production is limited by the intelligence of the brains rather than by the strength of the muscles. Uneducated brains require a maximum expenditure of muscular strength to obtain a minimum quantity or quality of products. For these reasons, lowest economic efficiency is the condition of unorganized man, brains and muscles, working in isolation.

Between the two extremes of lowest and greatest economic efficiency, is placed, for the purpose of illustration, a condition of average economic efficiency which is a condition created by an organization of men, brains and muscles, co-operating to increase individual profit-making through the increased efficiency of partnerships and corporations owned by individual stockholders. Such co-operation is forced by the reduction of the margin of profit caused by com-

petition which increases demand by lowering prices and makes it necessary to sell an ever increasing quantity of products in order to obtain a necessary annual income earned by a decreased percentage of profit. Product per man employed is increased by co-operation, therefore co-operation is the open road to increased individual profits for all who are, or have been, working in isolation.

Greatest economic efficiency is the condition of organized men, brains and muscles, co-operating to increase individual profit-making by developing and utilizing economies that are only possible to the largest operations which must be handled by multiple business units. These units may be created by trade associations or the closer organizations of combines and trusts. The pressure of competition compels the development of efficiency in every possible way. Efficiency that can be realized only through co-operation will be developed by this means. Natural progress in this direction will be made through the organization of trade associations. When statutory law forbids the organization of trade associations the irresistible force of natural economic laws will compel the creation of combines, trusts and abnormally large corporations. This has been demonstrated by the course of industrial development in the United States since the enactment of the so-called Sherman Anti-Trust Law; a law that has compelled the organization of combines, trusts and abnormally large corporations. Proper regulations for the creation and operation of trade associations will tend to check the growth of combines, trusts and enormous corporations, and will ultimately render such organizations absolutely undesirable, excepting for the business of furnishing facilities for the transportation of persons and commodities and for the transmission of intelligence.

Organized business units, simple and multiple, are the means by which mechanical and electrical power has been, is now, and must continue to be, utilized for the development of production and of all forms of trade facilities to the greatest economic efficiency.

Desire to increase individual profits is the vitalizing spark that gives life to all industrial, commercial and financial efforts. Without this desire the entire business structure, from the efforts of the unorganized man to the operations of the largest multiple organization of organized business units that can be conceived, would be dead.

The records of industrial development show that real competi-

tion did not begin in this country until after the year 1860. Prior to that time, especially before the utilization of steam power and during the long years of hand power and home industries, there was practically no competition in the modern sense.

The intense manufacturing activity in some lines, following the outbreak of the war in 1861, induced by the demands that war created, demanded enlarged factories and facilities of every kind. This forced owners to seek a constantly increasing business in order to make a profit. This brought them into direct competition with each other. This was the beginning of modern industrial competition in the United States. It grew without restraint until it developed destructive tendencies, which grew stronger and more vicious until they culminated in the panic of 1893.

During the recuperative years from 1893 to 1898, men capable of intelligent thought came to the conclusion that competition as then practiced was destructive, and that combination, or a recognition of a community of interests in some form was absolutely necessary to enable all persons engaged in productive industries to make a profit.

Unregulated competition forced the era of co-operation into existence, which commenced when men who intelligently studied the use, development, ineffectiveness and tendencies of unregulated competition, began to change their business methods to safeguard their business against wastage and destruction by adopting measures to restrain trade by regulating competition between themselves. The era of peace and good-will among business men began with the commencement of this era of co-operation.

In the course of time, immoral business methods induced and forced by the stress of unregulated competition became unendurable and demanded correction by governmental regulation. Attention was centered upon these methods or practices. No attention was given to a study of the economic conditions of which they were a natural and an inevitable product. Symptoms, not causes, were studied and exploited by those who formed political opinion. This caused political opinion to make a fundamental mistake in the measures advocated for the regulation of business. This mistake was induced by the error of conceiving the regulation of business methods instead of the development of profit-making to be the true objective point of economic theory and of correct governmental

regulation. This error caused a disastrous attempt to compel the continued use of methods belonging to the age of physical power (when men were compelled to operate in isolation or in small organizations utilizing slow and expensive facilities for the exchange of their products and industrial or commercial information), in an age eager to profit by the expansion of economic efficiency induced and made possible by the utilization of mechanical and electrical power.

The need and the duty of the present time is the learning of the lessons taught by reason and experience that the age of unregulated competition and regulated trade passed with the passing of the age of production and trade facilities limited to the use of physical power; that the development of economic efficiency must be the objective point of governmental regulation, as well as of all business undertakings, if individual and national welfare is to be efficiently developed and effectively safeguarded.

The learning of these lessons will cause the people to know that when laws conflict with business methods correct procedure requires that an investigation should be instituted to determine which operates as a restraint upon economic efficiency, the laws or the business methods. If the law is at fault, it should be repealed or amended. If the business methods are at fault, they should be abandoned or corrected.

Progress can be induced only by a recognition of the fact that laws must change, and business methods must change, to keep industrial development in true accord with changes in business facilities.

To be right and just, laws and business methods must be correctly aligned with the requirements of moral and economic laws.

An investigation of the moral and economic soundness of business methods should have for its objective point the elimination of all causes of conflict between business methods or statutory laws and moral and economic laws, not the creation of criminals out of successful business men.

When a business method is found to be morally or economically wrong, that fact, and only such a fact, should be made the basis for a demand that it shall be changed. If the required change is not voluntarily made within a reasonable time, then, and only then, should a criminal prosecution be undertaken.

As a concluding statement it is affirmed that destructive competition—competition that destroys ability to earn a profit is the

most powerful restraint that can be placed upon trade. It kills trade.

Governmental regulation of business will benefit the people to the degree in which it successfully aids economic efficiency.

This can best be done by providing for and promoting co-operation between men by the creation of organized primary business units, and by providing for and promoting co-operation between such primary business units through the creation of trade associations and multiple business units. Laws providing for the creation of such business units and organizations should establish rules for their correct self-government, and should make it certain that a fair share of the profits resulting from such organized efficiency shall be distributed to each individual interest, thus making them an efficient means for developing individual profit-making which is the fundamental basis of individual prosperity.

Individual prosperity is an infallible basis of and safeguard for national welfare.

PART THREE

*The Relation of Industrial Combinations
to National Welfare*

THE BENEFITS OF INDUSTRIAL COMBINATIONS

BY J. KIRBY, JR.,

President, National Association of Manufacturers, Dayton, Ohio.

Industrial combination has been the prime factor in the growth and progress of the world. To destroy or remove it from the activities of life would mean the stoppage of development; indeed it would mean more than that, it would mean the gradual decay of much that has been developed since creation. It would sound the death knell to ambition, because ambition must, of necessity, depend upon combination for its reward.

Surely it has been fully demonstrated that industrial combination is an indispensable element of our business life, and that without it our whole business fabric would disintegrate and fall, for, it must be borne in mind that industrialism and commercialism are interdependent and that whatever affects one necessarily affects the other.

Therefore, there should be thrown around it such safeguards of wisdom and protection as will make it of greatest value to the largest number. But we should never lose sight of the dangers which lie in the power of combination, and our greatest care should be to prevent that power being abused.

Industrial Combinations

An industrial combination must be measured by what it is. It may be a business organization composed of labor and capital formed for the purpose of producing and marketing any given product, or for the accomplishment of certain industrial ends, or it may be an organization of workmen formed for the purpose of furthering their individual interests. It is obvious that the relation of such organizations to the nation's welfare is all-important; in fact, the existence of modern civilization is dependent upon industrial business combinations to a greater extent, perhaps, than upon any of the other elements upon which it is based.

Therefore, in seeking to establish the relation of industrial combinations to the nation's welfare we must investigate their many ramifications and trace them from their beginning to their natural

and logical sequence, and then compare their economic effect with that of individual effort, exercising care in the analysis, to distinguish between combinations which are made up of single units, and those composed of aggregations of such combinations, and to measure them by the rule of reason as to their scope and purpose, together with the manner in which they attempt to exercise the power incident thereto; that is to say, whether to the injury or benefit of the public.

To create an industrial business combination, the first requisite is individual initiative coupled with ambition and energy, and the second requirement is capital. Then, to make the combination complete and effective labor must be made a component part. With these three elements welded together to form the combination there must be individual effort to direct its operation. And so we may say that such a combination consists of brains, capital, and labor, brains being the directing force, capital the motive power and labor the machinery.

Relation to Nation's Welfare

With the combination thus formed, we are confronted with the question, what is its relation to the nation's welfare? And here the question hinges upon the purpose and operation of the combination, whether it be one composed solely of individual units or an aggregation of such combinations. If it be monopolistic, and in its operation ignores the rights of others in the occupancy of any field of competition, or if it operates in unlawful restraint of trade, the combination is at once a menace and should not be tolerated, because it abuses its power and violates an economic law which must remain inviolate if the fundamental principles of human rights are to endure.

On the other hand, if the purpose of the combination is to stimulate trade and increase production, and if in its operation it refrains from an attempt to interfere by unfair methods with the freedom of others in the field of industry, or with the free and unrestricted flow of trade, then its tendency is toward the promotion of the nation's welfare, and it should be encouraged, rather than subjected to abuse and persecution. For it must not be forgotten, that the aggregation of initial combinations has been forced into existence through ruthless competition in business, which made absolutely necessary the adoption of some means to meet the demoralized condition of competition in many lines of industry, prevalent in this country some thirty or thirty-five years ago, since which time practically all of our indus-

trial business aggregations have come into existence. And, at this point, attention may properly be called to the fact that the period mentioned has witnessed greater development and prosperity than during any similar period in our history, and in which, while some have shared, more than others, all have participated in proportion to the part each contributed to the whole.

All is Not Gold That Glitters

In the consideration of this question, there is one important factor which should not be lost sight of, but which is too frequently overlooked; that is, the great number of new industrial enterprises which fail of success. Bradstreet's and Dun's commercial agencies have reported the astounding figures of 95 to 97 per cent. But ignoring all official reports, every experienced manufacturer knows that for every really successful industrial corporation there are very many that labor under a continual struggle to keep their heads above water, while very many more sooner or later go under.

Hence, it must be admitted that any legitimate combination of interests which tends to steady the balance of trade in industry through increased or improved production, and which serves to reduce friction between labor and capital, by minimizing the necessity for frequent reductions in wages, incident to a ruthless competitive system, is of general benefit to the nation and with proper safeguards against abuse of its power should be stimulated and encouraged, rather than handicapped by restrictive, unwise legislation and public criticism.

Big Business Sometimes a Public Benefit

However great may be the fault found with some large industrial business combinations, the operations of many of them seem to have been beneficial, rather than otherwise, to the common good.

Yet, it would, indeed, be a dangerous thing for this country to ignore or permit the unrestricted power of great corporations or combinations, whether of capital or labor, in the monopoly of commerce or industry, or in the monopoly of the labor market, and proper restrictive legislation should and must protect the citizens against the use of such power by the representatives of capital or the representatives of labor.

Therefore, the good which comes to the public from business combination should be preserved, while the strong arm of the law should reach out and throttle that which is bad.

There are certain combinations of labor which are founded upon the principle of live and let live, and whose operation and methods are within the written and unwritten law of equity, fairness and morals. Such combinations seek to improve the moral, intellectual and pecuniary condition of their component units, through the medium of organization. They are to be commended, rather than condemned, as should any organization of men or women, having such legitimate purpose in view.

But there are other combinations of labor, aggregated into one federation, representing approximately four and one-half per cent of all the wage-earners of the country, of whom practically sixteen per cent, all told, are members of labor organizations of one kind or another. Whatever the alleged purpose of this combination or federation as it is called, it operates in defiance of the laws of both God and humanity and openly ignores the principles of right and justice.

Its abuses so greatly exceed all other industrial evils as to cause the latter to appear infinitesimal and of little consequence in comparison.

Its purpose is to have the workers control the employers' business in matters pertaining to the management of employees; to dictate who may and who may not be employed; the conditions under which labor shall be employed; the amount of work a man shall perform for the wages he receives; the number of hours he may work or pretend to work; the number of our American boys that shall be permitted to learn trades and thus become useful and industrious citizens, and the number that shall be turned adrift to become vagabonds or tramps or whatever fate may have in store for them.

In fact, the goal to which this combination aims is an absolute monopoly of the labor market, whereby it may grant or withhold, at its pleasure, privileges, the power to grant or withhold which is not even assumed by the state or the nation.

The record of this organization and the acts and utterances of its officers, leave not the shadow of a doubt that its policy is to employ any means, no matter how brutal, unlawful or unreasonable that will tend to promote an industrial condition in this country

in which the employing classes shall be absolutely at the mercy and dictation of the gigantic and merciless labor trust, which, as I have said on another occasion, "Proposes to say to the farmer that he shall either harvest his crops under its rules, or permit them to perish; to the manufacturer, that he shall neither produce nor transport contrary to its will; to the merchant, that he shall neither buy nor sell, unless his wares bear the brand of its approval; to the laborer, that he must wear the yoke or starve; and to those who belong to none of these classes, that they must suffer the wrongs, submit to the losses and pay the penalties to which its rules subject them."

False Pretences

Too many well-meaning people have been deceived by the sham pretences and hypocritical statements about "the great American labor movement" and the "uplift of the toiling masses," issued by the officials of this organization which has proven itself to be a cold, merciless and murderous labor trust, caring not so much about the "brotherly love" and the "uplift of humanity," that its ringleaders talk so much about, as it does for the control of things which it has no right to control. The hard, cold facts are, that every step it makes toward its goal means a step nearer control by an arbitrary oath-bound labor trust, under the domination of which personal and property rights and human liberty would pass into oblivion, except in so far as the trust machine might condescend to recognize them.

Closed Shop Crisis

This combination was referred to in an editorial in the *New York Times* of February 17, 1912, entitled, "The Closed Shop Crisis," and from which the following excerpts are quoted:

"If the closed shop shall be established, no man can earn wages without a union license, and the union is under no necessity to grant the license. The right to live includes the right to earn a living. Work for the unemployed is one of the first demands of the unions upon the society which they condemn and propose to improve by their own methods. And yet the unions would deny that right to any except their own members. That is to say, the right to live would depend not upon universal law, but upon com-

pliance with union standards and bearing of union burdens. The man unwilling to or unable to comply with the union requirement would be a social pariah, possessing only the right to starve.

"Nothing is suggested here worse than a general appreciation of the meaning of the closed shop, which in its essence, and as practiced, surpasses in cold-blooded malice and oppression of the needy and the innocent the dynamite outrages themselves. . . .

"It is a political outrage that there should be obstacles to any man's realization of his own plans for an honest livelihood. The economic wrong on the community is equally offensive, and can be translated into facts of easy understanding."

"Times" Argument Conclusive

The editorial from which the foregoing excerpts are quoted so truthfully and forcefully portrays the real objects of the American Federation of Labor, the methods it employs for enforcing its closed shop policy, and the disastrous results to the country if it were successful, that further argument relative to the lamentable conditions which would result from the ultimate supremacy of organized labor, which would then be a combination of socialism and trades-unionism, or discussion of this phase of the question, "The Relation of Industrial Combination to National Welfare" is unnecessary in the presence of so learned and distinguished a body as the American Academy of Political and Social Science.

INDUSTRIAL COMBINES AND NATIONAL PROGRESS

By J. K. GWYNN,
American Tobacco Company, New York.

Preliminary to the discussion of any phase of industrial combination it is expedient to take a comprehensive glance at world-wide social and economic conditions. Humanity at large is in a ferment of social and economic unrest. While this turbulence assumes different phases and expresses itself by different methods in the several countries of the world, it is practically the same in purpose everywhere.

In view of these widely prevalent conditions, it behooves the seeker for causes and remedies to find, if possible, some compelling motive of universal prevalence to account for this phenomenal state of affairs. This, in my judgment, is not a difficult task, for if observation guided by the teachings of experience is to be trusted, the world is now moved by one of those waves of spontaneous impulse that occur from time to time to lift the race to a new plane of achievement and new heights of realization. This impulse is no less than an epoch-making aspiration for equality, that is stirring the hearts and quickening the lives of mankind. This is true, irrespective of the fact that the people, in many cases, fail to interpret their own emotion in terms of this sentiment. The overthrow of the kingdom of Portugal; the humiliation of the House of Lords and the aggrandizement of the Commons in the British Parliament; the increase of Socialism in Germany, France, Spain, and elsewhere, are but so many different expressions of this all-prevailing aspiration. But to the student of social and economic conditions, the overthrow of despotism in poor old moribund China and the awakening of the people of that decadent empire to demand a republican form of government, is the most amazing and impressive of all the world-wide expressions of this spontaneous yearning.

In our own country, as was to be expected of a people so virile and resourceful, this aspiration assumes many aggressive phases. Among these may be enumerated the acute differences between capi-

tal and labor; the demand for the initiative and referendum; and the sporadic demand for that more radical measure, the recall. Again, the clamor for publicity and the prevailing hostility to large corporations give forceful utterance to the same feeling.

The crusade against the industrial combine, while not the most important, is the most spectacular expression of this impulse, because it so readily lends itself to purposes of political expediency.

The industrial combine is the product of evolution and not the creature of invention, as is widely though erroneously supposed. According to popular understanding, industrial combines sprang full-fledged into existence at the command of some colossus of commerce, solely to serve selfish ends and predatory purposes. The truth of the matter is that, as a rule, they did not have their origin in voluntary initiative at all, but were ushered into existence by conditions beyond the control of those whose properties were merged to form the combines.

In the drift from primary pursuits to manufacturing industries that occurred during the late eighties and the nineties, manufacturing establishments in nearly all departments of industry multiplied at such a rapid rate that the domestic markets to which our manufactures were then largely restricted were incapable of consuming the output. Competition became so intense as to jeopardize capital invested. Indeed, disaster and bankruptcy among industrial ventures became widely prevalent. Confronted with this state of affairs, people having funds so invested sought eagerly for some avenue of escape from calamity, and "any harbor in the storm" became the slogan of the industrial chieftains at that time.

Unrestricted competition had been tried out to a conclusion, with the result that the industrial fabric of the nation was confronted with an almost tragic condition of impending bankruptcy. Unrestricted competition had proven a deceptive mirage, and its victims were struggling on every hand to find some means of escape from the perils of their environment. In this trying situation, it was perfectly natural that the idea of rational co-operation in lieu of cut-throat competition should suggest itself.

Many men of affairs at the outset did not take kindly to the idea of the industrial combines, for several reasons. One of the most potent of these was the personal equation that entered into the calculation. Individualism is a striking characteristic of the American

business man. The large industrial enterprises of the country, as they existed prior to the time of the combine, were the product of the genius and enterprise of a few individuals. That is to say, in almost every case where a large industry had been built up it was the result of the foresight, skill and constructive ability of one or two persons. These individuals were animated by a degree of pride of achievement that is perhaps incomprehensible to those who did not come in personal contact with them. They each felt a paternal pride in the industry which their genius had developed. The idea of relinquishing individual control by merging with others and becoming merely one of the directing minds of the greater industry was in many cases abhorrent. So strong was this motive with many that the formation of some of the combines that ultimately came into existence was postponed for years; indeed, postponed in some cases until the death of one or more of the founders of a great industry made it possible for his heirs, who were less inspired by considerations of pride of achievement, to recognize true conditions, and from motives of self-preservation merge the enterprise with others of like character, not for predatory purposes, but for what they considered to be discreet, honorable and legitimate business ends. This briefly, but correctly, is the story of the origin, in a great many cases at least, of the industrial combines.

The combine having been successfully formed, the question of administration immediately presented itself for solution. It was natural that the most capable of all the men connected with the various enterprises entering into the combine should be sought out for leadership, and here the so-called "captain of industry" made his appearance. He has been held up to the scorn of the world as the embodiment of greed, the essence of graft and a demon of boundless rapacity.

The simple truth of the matter is that the so-called captain of industry in nearly every case came up from the ranks of the plain people. He is bone of their bone and flesh of their flesh. His ambition to achieve worthily was the inspiration of a wholesome environment in the modest or lowly American home and American school in which his early years were spent. Instead of conniving at wreck and ruin, his thoughts were altogether occupied with constructive policies. He found himself in a new and untried field, with vast responsibilities upon his shoulders and endless ramifications of detail to handle.

He had been taught from childhood that diligence in business was a praiseworthy quality and he applied the precept rigorously. He had been taught that it was prudent to keep one's own counsels in business affairs, and he therefore did not take the public into his confidence. His reticence was construed as impertinence and his silent zeal in the prosecution of his plans into malignant designs against the welfare of the populace.

Success in the management of these great combines inspired self-confidence on the part of their administrative heads, which in turn stimulated attempts at successively greater and greater achievements. It also seemed to confirm the correctness of their attitude in ignoring what seemed to be unwarranted curiosity on the part of the public, whose welfare they felt they were subserving and whose suspicions they regarded as unfounded. So the breach between the preoccupied combine heads and the general public widened. Both its prevalence and its intensity were underestimated, if at all considered, by the busy men who were working industrial wonders. They were human, and made mistakes.

It must be remembered that these captains of industry were explorers, so to speak, in an untrodden wilderness of human endeavor. They were compelled to devise methods and invent instrumentalities with which to push their enterprises beyond the existing limitations of commercial achievement.

In a material wilderness there are neither highways nor signposts to guide the explorer. So in the unexplored realms of industry into which modern combinations have pushed their undertakings, there were, in some cases, no well-defined laws to guide their activities, and say, "Thus far shalt thou come, and no farther."

What was to be done in such cases? Was enterprise to pause, endeavor to cease, and courage to be dismayed from lack of a statutory chart? The toilers who make progress possible in human affairs are made of sterner stuff. Where there are no laws and where, in the very nature of the case, there can be no laws defining the limitations of endeavor, they become a law unto themselves and leave to the future and to the calm impartial judgment of their fellowmen, expressed through legislation and the courts, ratification or rejection, confirmation or modification of their methods so as to make them conformable to the best interests of society.

In this connection, it is pertinent to remark that law always

lags behind material progress. This is necessarily so, for there can be no law to govern a condition until the condition has arisen. For example, there could be no law regulating the operation of automobiles until there were automobiles to operate. Nevertheless, the absence of law prescribing the limitations of endeavor in new departures in manufacturing and merchandising as they relate to public welfare, is one of the most serious handicaps with which pioneers in the field of industrial expansion have to contend. It injects an element of uncertainty into the most carefully laid plans, and out of this uncertainty grave embarrassments and costly delays have occurred, and expensive not to say revolutionary modifications of methods may be imposed.

In our country opportunity is so inviting, the field so vast, the resources so boundless, and the rewards under favorable conditions so rich, that our business men have devoted their lives to material enterprise with a consuming zeal and contagious enthusiasm that spurn all obstacles. Manufacturing plants of imposing magnitude and amazing diversity of product spring up everywhere. Inventive genius, inspired and spurred by the fascination of achievement, supplies instrumentalities for greater and ever greater material conquest. The automobile, the wireless telegraph, the aeroplane, and like inventions come along in such quick consecutive order as to fire the imagination and stimulate seemingly superhuman accomplishments. Railroads with their tentacles of steel enmesh the plain, the valley, the mountain and the morass, and together with electricity make a contiguous neighborhood of the people of a continent.

Are men, under the spell of these accomplishments, in any frame of mind to cease endeavor, while lawyers and courts haggle over the interpretation of a federal statute? Would it be human, under such circumstances, for them to stop short in contemplation of the effects of possible legislation? As well expect a general to stop a winning battle, to contemplate the effects of his potential victory on posterity, as to expect this.

The courts cannot anticipate or forestall legislative action in their decisions, and hence the business interests of the country have been floundering in a sea of uncertainty for years, because of the tardiness or inefficiency of our legislative bodies.

An impressive object lesson is thus presented of the dependence of material progress upon the will of the people, expressed through law as interpreted by the courts. On the one hand, the businessmen of the

country stand ready with complete equipment, definite aims, consummate skill and abundant means to set in motion the machinery of progress that makes for prosperity. On the other hand, we have confusion worse confounded among the law-makers. Discordant views prevail among those high in the counsels of our legislative bodies, and little progress is being made in the solution of our great problems. Indeed, it would seem that little patriotic effort is being made in that direction. The industrial welfare of the nation is for the time being a mere pawn in the political game, and, apparently, is made principally to serve purposes of partisan expediency. There have been few times in our history when the need of constructive statesmanship was so imperative as now.

But whatever vicissitudes of legislation may await the industrial combine, it is here to stay. It was born of necessity and will remain through merit. It is, so to speak, a clearing house of utilities wherein apparently unrelated instrumentalities are so co-ordinated in a general scheme that each facilitates to the utmost the harmonious and efficient working of all the others. It is, therefore, an instrumentality for betterment that the public will not forego. Indeed, we hear little or no complaint against the combine as a means of progress. The people are not offended at the multiplication of comforts and conveniences through the agency of the combine. The complaint is against its hitherto secret methods, its uncanny magnitude, the few vast fortunes that it has brought to individuals, and, above all, the alleged wrongs that it has done. That there have been occasional abuses of power and that flagrant wrongs have been committed are known facts. Albeit these are not peculiar to industrial combines, yet they can neither be condoned nor justified. In some cases, possibly, wrongs have been perpetrated for which there are no extenuating circumstances, and in such cases condemnation cannot be too outspoken or punishment too severe. But because ideal conditions are not realized in statecraft, education and law we do not abolish government, schools and courts. We strive to eliminate the imperfect and the evil and to perpetuate and perfect the useful.

So must we do with the combine. The imperfections and abuses incident to its rapid development must be sternly rebuked and their continuance made a hazard so great as to forestall their repetition, while its power for good should be safeguarded and perfected in the interests of progress and for the benefit of the people. How this may

best be accomplished is one of the most perplexing questions of the hour. Under all the circumstances, some kind of adequate government supervision is both necessary and desirable. Many expedients have been proposed, but most of them bring the matter within the pale of political influence, which is abhorrent.

All things considered, I believe that a non-partisan federal commission composed exclusively of practical business men of broad experience is the best solution of the matter. Such a commission should be absolutely non-partisan and clothed with the same dignity and independence as is that revered body, the Supreme Court of the United States, which challenges the admiration and confidence of every good citizen for its wisdom, impartiality and fearless consecration to the discharge of its important duties.

I want to say, however, that it will be difficult to get business men of the proper equipment to compose such a commission. Our most capable, experienced and efficient business men are indispensable to the industries over which they preside. Furthermore, they are under certain obligations to vast numbers of stockholders to continue as the directing minds of these enterprises, and hence it would be almost impossible for them to assume such duties, however important. In addition, the loss to the country of their directing abilities along industrial lines would probably more than offset the good that they would accomplish in giving up everything for such purpose. But if we must have governmental supervision, by all means let us have it through a non-partisan commission of practical business men of the best available material.

Contribution of Combination to National Progress

Prior to the formation of industrial combines our exports of manufactures were inconsiderable. But the capital and equipment of these combinations enabled them to give a great impetus to our export trade in manufactured products. Our exports of manufactured commodities during the year 1911 more than quintupled similar exports during the year 1890, and nearly doubled like exports during the year 1900. The value of our exports during the year 1911 increased more than one hundred and forty millions of dollars over like exports during the year 1910, and the increase of that year exceeded the total exports of finished manufactured commodities during the year 1890. Our manufacturing industries in the year

1909 consumed materials costing in the aggregate \$12,141,000,000 and turned out products which were valued at \$20,672,000,000. The value added by manufacturing processes was \$8,530,000,000, while in 1899 the cost of materials was \$6,575,000,000 and the value of the product was \$11,406,000,000, showing added value of only \$4,831,000,000, which comparison shows an increase of seventy-seven per cent in added value in the decade.

The aggregate outlay for wages in the manufacturing industries of the United States increased from \$2,008,000,000 in 1899 to \$3,427,000,000 in 1909, an increase of about seventy per cent, while the number of wage earners increased only about forty per cent.

Under the methods of the combine the wild fluctuations to which both wages and commodities were formerly subjected are largely eliminated; the market for raw materials is more stable and regular; labor is more steadily employed and at better wages, and commodities reach the consumer in fresher and more satisfactory condition.

The combine has so standardized commodities by brands as to minimize the carrying charges of both the wholesale and retail dealers. The trade on these standardized brands is so normal and regular as to enable the dealer to keep standing orders with the manufacturer or producer for his supplies, so that the goods flow into stock and out again in a steady stream without the necessity of incurring heavy carrying charges on excessive or speculative stocks. Furthermore, the guarantee of the producing combine is behind most of the goods so standardized, consequently the heavy losses that dealers once suffered from accumulations of unsalable odds and ends of unstandardized articles of merchandise are almost entirely eliminated.

The combines are charged with many sins of omission and commission, while little has been said about their industry and constructive activities. These are innumerable and cover a wide range of endeavor. They gather up raw materials from every quarter of the globe, and in our factories convert them into manufactured commodities which are distributed partly at home and partly throughout the world.

The organizations of some of the combines for distributing their wares to the uttermost ends of the earth are amazing in their ramifications and completeness. They embrace the dense populations of India and China; the torrid regions of Africa, Burma and Siam; the bleak steppes of Mongolia and the frozen plains of Siberia; the fast-

nesses of the Andes and the solitude of the Himalayas—wherever there are human beings, however remote, through some channel and by some means certain American commodities find their way and contribute to the comfort and convenience of the people.

In this manner money from the whole world is gleaned and transmuted into American value to pay American labor at American wages and to build up American commerce. This surely is no trivial achievement. To devise and successfully to operate so comprehensive a system of distribution, involving the use of every conceivable mode of transportation by land and water; the bartering with people of all degrees of intelligence from savant to savage, speaking all languages and having every conceivable kind of currency, is a triumph of merchandising skill and daring that would seem to deserve respect. It would seem to deserve the encouragement of approving recognition rather than the odium of indiscriminate condemnation. It is an achievement that was impossible before the advent of the combine, because of lack of capital and adequate facilities. Our country needs more—not less—of such enterprises. Surely the minds that conceive and execute such world-embracing achievements in merchandising have something useful and legitimate to think about—something other than the crushing of their fellowman under the remorseless tyranny of greed and avarice.

CONTRIBUTION OF INDUSTRIAL COMBINATIONS TO NATIONAL WELFARE

By MAGNUS W. ALEXANDER,
Of the General Electric Company, West Lynn, Mass.

A combination of either men or capital is in itself neither good nor bad, except in so far as it exercises its potentiality in the one direction or the other. This potentiality stands in direct proportion to the size of the combination and is even greater than the combined potentialities of its component parts, just as the purchasing power of a thousand dollars, due to the advantages of wholesale buying, is even larger than the combined purchasing powers of the individual dollars making up this sum.

The relation of industrial combinations to national welfare can, therefore, be discussed along two lines, according to whether the combination is a good or a bad one from the standpoint of the common good, or whether it is large or small in size. Eliminating the second differentiation as one of degree only, we must at once choose between the combination which utilizes its potential power for social good or social evil in order that we may be in a position to judge of the character of its contribution to national welfare.

In the final analysis, there can be no question that fair-minded men will lend neither their approval nor their moral support to any combine which operates in defiance of the common good, neither will they countenance any act of an otherwise well-intentioned body which does not successfully stand the test of fairness to all concerned. Admitting then that any force which does or can react unfavorably upon the common welfare should be fought relentlessly and eradicated by all legitimate means, it follows that to discuss the relationship of such force to national welfare can serve no constructive useful purpose save to outline its baneful influence in clear and strong contour to the end that men may be deeply stirred and stimulated to wage war upon it. This war, however, must be one of fair discrimination, directed against the abuse of power and not the power itself, and concerned with the weakness and imperfections of the industrial system and not the elimination of the system itself

which has sprung up in response to the development of modern industrial activities.

As our political system is based on the conception of a government of law and not a government of men, so should our industrial system of combinations be judged by the character and inherent tendency of the combinations, either to subserve the public good, or to exploit the people for the benefit of the few, and not by the commissions or omissions of those who are the directing heads of the day and who, if they act unmindful of their obligations to society as a whole, should become the personal target of our scorn.

Firmly convinced that the unfailing work of public opinion and the certain though often slow process of remedial legislation and judicial adjustment in a well-ordered state will inevitably right what is wrong and harmful in any system, I shall refrain from a further consideration of the injurious and destructive, and turn to the helpful and constructive phase of the relation which industrial combinations bear to national welfare.

I submit as my fundamental proposition that an industrial combination is and ought to be made a powerful agency for the common good. Some of them are already working in this direction and many more are showing an unmistakable tendency along these same lines. Such combinations, to my mind, would be managed by able, fair-minded men who, though naturally engaged upon utilizing the money entrusted to their care by the stockholders in the most profitable manner, are at the same time conscious of their social obligations to their employees, their customers, the community in which they operate, and to the people at large, and, in addition, possess the imagination and foresight to realize that such broad-minded conception of duty and obligation will in many ways help, and in no way hinder, the accomplishment of their legitimate business purposes.

On the other hand it may be said, that national welfare is synonymous with a condition under which the people enjoy a fair and adequate measure of contentment and happiness, of healthy physical and mental development, all of which, in an industrial sense, will result from the payment of an equitable compensation for labor, and the establishment of fair conditions of work. Each individual employer, as well as a combination of employers, can, of course, contribute his proportionate share toward the welfare of those work-

ing for him and with him. Yet our complex social and industrial life offers many problems with which the individual cannot readily cope on account of the large resources of money and the broad treatment which their solution demands, and also because the successful carrying out of some sociological plans must depend upon larger aggregation of workers and means than are ordinarily grouped under a single employer. When banded together in an industrial combination, they can collectively carry into effect what individually they could not easily bring to pass, while at the same time their combined strength in capacity, finance and opportunity will permit the consummation of such benefits in a larger degree and on a firmer foundation than would otherwise be possible.

The care of sick and injured employees and of those who through old age can no longer render efficient service, but who by virtue of their past work are entitled to spend their declining years free from want and with the preservation of their self-respect; adequate assistance to those dependent on the victims of accident and sickness and who are thus deprived of their sole means of support; the establishment of sanitary and hygienic conditions of the most approved order in the work shops and throughout the premises of the employer, and even in the homes of the employees; the industrial education of the boys and girls who are to take up the burden of the work in the coming generation, and the advancement of those already employed who are anxious to reach a higher plane of industrial usefulness so that, with an increased skill and mentality, imagination and taste, they may derive greater enjoyment from their leisure hours and more contentment in their daily work; these and many other similar activities are merely indications of the vast field of genuine and lasting helpfulness in which the power and resourcefulness of the industrial combination can promote the well-being of the people.

These matters, as I have said, are indissolubly associated with the welfare of the working people; and inevitably we are led to inquire as to the relative capacity and opportunity of the individual employer and the large combination to open up this great field to the advantage of the employees. Can the average individual employer successfully compete with the larger combinations in the erection of workshops and factories which present model conditions of lighting and ventilation? Can he as readily afford to introduce every effective measure that will make for the safety and convenience of his workers? Above

all else, can he assure to his employees that steadiness of employment throughout the year which is the very keynote of the welfare of the people? An increased daily or weekly wage alone, we must admit, will not permanently improve the lot and comfort of the workers unless in addition the employee can have a fair assurance of this wage for every week of the year, provided he is ready, in return, to give of his labor in a fair and honest manner.

The struggle for an increased wage has always existed, and will continue as the centuries roll by; it is after all, only one phase of the everlasting struggle of evolution to a higher plane of existence. We should not deprecate this tendency but rather make it our serious concern, if we truly desire to advance the welfare of the people, to find ways and means of affording to the workers steady opportunity for work as far as this can be done under ordinary conditions of commerce and industry.

It would seem that the wisely managed industrial combination is in a fair position to do this, whereas the individual employer can only approximate it. By virtue of its resources and power the large combination can effectively minimize waste of production and the larger waste of the distribution of goods; purchase its raw materials at a low rate; effect economies of manufacture through the introduction of special machinery and efficient business methods; and therefore, without lowering the wage scale, reduce the cost of production and, correspondingly, the selling price of the finished product. This in turn will place articles heretofore classed as luxuries within the reach of the masses and, therefore, tend to open an enlarged market of consumption which must result in increased production and a greater opportunity for steady employment. Moreover, an industrial combination more readily than an individual employer, can so adjust its production as to distribute it fairly equally over the whole year, being further aided in this respect by its ability to engage in various industries of the same general character and to anticipate future requirements by producing and stocking goods for future consumption. Its resourcefulness in money and brains, furthermore, gives the industrial combination the potential advantage of stimulating and developing inventions for the advancement of the arts, with the resulting benefit that new fields of activity will be opened up for general use and, in consequence the comfort and the pleasure of the life of the people enhanced and national welfare promoted. While I

am aware of the argument on the other side that competition will more surely bring to the surface latent possibilities and capacities which may stimulate inventions and make for general efficiency, I submit that industrial combinations do not eliminate this condition, for the stimulant of ambition acting upon genius will make itself felt just as powerfully between men, whether they derive their opportunity and their reward from the same source or from different ones. The further claim that industrial combinations can and sometimes do deprive the people of the benefits of such improvements by withholding their exploitation and use, would, to my mind, if well founded at all, merely indicate the way along which the scope and character of our legal machinery should advantageously be improved to the end that the combination itself may be made more serviceable to the welfare of the people.

The burden of my whole argument in support of the wholesome influence of industrial combinations on national welfare is based, as already stated at the outset, on the assumption that these combinations are and ought to be constructive and beneficial in character. It would be folly, however, to close one's eyes to existing deficiencies in the operation of some industrial combines, or to the possibilities of harmful results growing out of their future actions. An aroused public conscience will have to apply from time to time necessary corrective measures, as it is now at work to crystallize into statutory provisions such safeguards and regulations as would seem necessary for the protection of the people against real and alleged abuses of some combinations. These abuses may, in the main, be traced back to a lack of appreciation by some industrial managers of the sociological needs of the times, and to a neglect of the psychological aspect of modern industries. In all fairness, however, to the sagacious business men who created and developed our wonderful industrial system until it challenges to-day the admiration of the whole industrial world, it should be remembered that the intensity of this upbuilding process so engrossed their thought and time that the sociological phase of their work had necessarily to be somewhat neglected. The great expansion of the working force and the great influx of foreign workmen during the last two decades, however, and consequent multiplying restrictive legislation and growing influence of organizations of workers and employers, greatly contributed to the present complexity of the conditions of labor, and forced closer

attention to the human factor in industry than had heretofore been given. Much constructive work has been undertaken of late in this respect, but much more needs to be done by the employers of labor and particularly by the industrial combinations.

In order, then, that this work may receive proper direction and attention, I would earnestly advocate the establishing of a "Department of Applied Economics" in each industrial combination and, as far as practicable, by each individual employer. This department should concern itself with the study of human progress in its relation to industrial employment, so as to be able to analyze each existing condition and to propose an adequate and broad-gauged plan of action where such is required; and more important yet, to foresee the conditions of employment which the development of the industrial system is bound to create, in order to suggest ways and means which will effectively meet the coming situation and even anticipate and direct it into its proper channels.

Experts in all matters pertaining to the welfare of the working classes, familiar with the history of the movement for improving human conditions, analytical and constructive in mind, ready and anxious at all times to assist the industrial managers in the treatment of the human phase of their great and vast problems,—these practical economists in our industrial system would prove an important factor in the further development of the potential power of industrial combinations for the promotion of national welfare.

The spirit of the times is tending towards humanitarianism. The human side of industry must, therefore, receive increased recognition and expert study and attention. Its adequate treatment would be an appropriate response to the demands of the day and would prove beneficial alike to the interests of the employer and the employee, by eliminating economic waste and conserving human energy.

The Department of Applied Economics is proposed as the agency through which the desired result would be achieved.

PUBLICITY IN AFFAIRS OF INDUSTRIAL COMBINATIONS

ADDRESS BY JAMES R. GARFIELD,
Ex-Secretary of the Interior, Cleveland, Ohio.

LADIES AND GENTLEMEN:

In considering the relation between the industrial combination and the national welfare we should first define national welfare and industrial combination.

National welfare is almost synonymous with the common good. It includes all phases of our national life. It is by no means confined, as some view it at times, to material welfare, prosperity that is measured in bank accounts, in great manufacturing institutions, and in wealth generally. It includes also our social, our moral and our political life. In both the national and in the state constitutions the promotion of the general welfare is expressed as being one of the prime objects of government. That purpose has very often been neglected or forgotten, and there are too many instances where we, as a people, have, instead of considering the general welfare, considered the special welfare, either of special sections of our country or of particular interests in our country. But to-night I wish to call your attention to the broader definition I have indicated.

What do we mean by industrial combinations? We there again must not be limited by the definition merely of a corporation or a business. Industrial combinations should not be considered simply as agencies of commerce, from the standpoint of the capitalist. We must include with the capitalist and with the capital invested, also the laborer and the labor put into the industrial combination. These two elements make up the combination. We must consider the relation of these two elements of capital and labor, money invested, and muscle invested, and try to find out what their relation is, what it should be, to the general welfare.

It is, of course, a subject that is open to unlimited discussion, and there can be but a few of the phases of this discussion presented to-night. I shall try to present to you some of those that have been uppermost in my mind during the last ten years or more, while I

have had the privilege of being a part of the movement that has had to do with the attempted solution of some of the difficulties. We will consider three phases of national welfare—industrial, social and political.

Industrial welfare is measured in great part by the financial returns to capital, labor and the public; but in connection with the financial or money side of industry there is the rapidly increasing importance of that phase of industry that has to do with the health and lives of the laboring men and women. Whether this question is approached from the side of mere money saving or from the higher and better side of humanity, it presents one of the most important subjects for consideration. Industrial prosperity depends upon the efficiency of labor and the highest efficiency can only be obtained when the conditions of labor are such as to develop individual efficiency. This element of industrial welfare includes hours of labor, conditions in workshop and factory, the living wage and similar problems.

Social welfare has to do with the lives of industrial workers outside the shop, mine or factory. It involves the consideration of family life, the education and training of children, the means for recreation and enjoyment and the actual living conditions in the great industrial centers. Social welfare therefore goes to the root of our national life, as it affects the character and morality of the generations to come. The tremendous importance of the problems involved in social welfare cannot be over-estimated. The future of our country depends upon the vitality and morality of its individual citizens.

Political welfare is the welfare of the community as a whole, whether it be the city, the state or the nation. The strength, efficiency and decency of these political divisions will depend upon the quality of the citizens who compose and control them. If citizens are indifferent to their political obligations it is inevitable that the political welfare of the community will be left to the hands of the professional boss, whose chief aim is certainly not the public welfare. No matter how good the system of government may be, it will become inefficient or corrupt unless the majority of the citizens are willing to devote time and intelligent effort to the consideration of political questions and the selection of proper public officers.

As we have thus roughly defined the national welfare, we must also define the industrial combination. These great industrial agents

have not sprung up over-night, but are the growth of the last quarter of a century of our industrial life. It is a mistake to assail all great combinations because of the flagrant abuses that exist in some combinations. We must remember that the growth of the corporation, the consolidation, or the trust, has been for the most part under and in accordance with the laws of different states, laws that have been and are lax or vicious, but nevertheless laws adopted by the people or permitted to remain upon the statute books because of the indifference of the people themselves. It is in comparatively recent years that we have awakened to a full realization of the danger of unregulated and uncontrolled corporate action. We as a people have ourselves to blame for present conditions. We have been too anxious to make money and have measured success too often by money alone, with too little regard for the rights of the individual and the obligations that society as a whole has towards individuals.

The industrial combinations, practically always in the form of corporations, have developed with great rapidity and extended their fields of activity until in almost all industries there are corporations that deal with their products from the raw material to the door of the consumer. They engage in commerce and trade throughout the world, and employ thousands upon thousands of men and women. Their financial strength and the extent of their activities make them factors of vital importance in the industrial, social and political welfare of the nation. It is the relation of such combinations to the national welfare that we are considering.

The first step toward a proper understanding of conditions is of course a knowledge of the affairs of such combination. This knowledge can be obtained only by thorough, painstaking, fair investigation made by the public authority. Efforts in this direction have been made by both the states and by the national government.

The wiser and better leaders of business have co-operated with these public investigations realizing that there can be no injury to legitimate business by the full disclosure of business methods. The business leaders who have taken the opposite course first by denying the right of the public to investigate, and secondly by throwing every obstacle in the way of investigation, have done harm not only to their own corporations but have brought suspicion upon big business in general. However, the right of the public to investigate corporations has been firmly established, and all that is now necessary is for both the

nation and the states to exercise this right wisely, fairly and thoroughly, to the end that the public may have accurate information upon which to base the policy for the determination of the future relation between big business and the public.

The wiser leaders of big business have already done much toward the establishment of the right relations to the public. In many instances they have made investigations into the social and industrial welfare of their laborers, and have adopted methods for radical change in the improvement of both working and living conditions.

The national government and many of the states have enacted laws under which there has been a vast improvement in the living and working conditions of industrial workers, and the newer relation between the corporation and the public has been definitely established. The making of these changes has of course not been accomplished without friction and in too many cases has caused hostility, but I am one of those who have the utmost confidence in the ability of the American people to justly work out these problems. We can avoid injustice and excess if we are willing to-day to recognize the conditions that have already been developed, and begin now, not ten years from now, to try to improve those conditions. There is, of course, danger in going too fast, but there is still greater danger, if we follow the advice of those who are afraid to move at all, because they cannot see clear through to the end of the new order of things. The relation of the corporation to industrial and social welfare is of the greatest importance, and I have but suggested some of the questions that arise in that connection. I wish this evening especially to call your attention to the relation of great combinations to the public in the political sense.

The political relation of these bodies to the national welfare is totally different from the relation of the individuals of which they are made up. Politically every one of these organizations or associations is entitled to fair treatment, to a full hearing on any question that affects its work, its opportunities, its profits, its methods, but not one of them is entitled to a voice in politics, to representation in public office, or to influence over public officers. It is because many corporations have either interfered or attempted to interfere in politics, that the outcry is made against them. When a railroad or a great industrial corporation has exercised influence over the legislative bodies of the commonwealth, or has controlled

the selection of men in public office, that corporation has gone entirely outside of its proper and legitimate sphere of action, and has become an enemy to the public welfare and the common good. I grant you that there have been instances in which, on the other side, men in public office have been unjust and unfair to corporations, have sought to hold up the corporation and have used their political power for the benefit of themselves rather than for the good of their constituents; but because that is true it does not excuse the corporation for improper action. We must see to it that all this kind of relation between corporations and the public shall cease. It will not be done in a day, it will not be done in a year, but we should face sternly the road that lies away from that kind of relationship between industry and our political life. We should strive in every one of our commonwealths and in the nation to keep out of office men who stand as representatives of any one of these particular, special interests. And let me again emphasize this: when I use the words "special interests," I apply equally to the labor union, to the farmers' alliance, and to the corporations. Not one of them should be permitted to have a representative in any public office. That is one of the first steps for changing the evil conditions that exist in many places.

Now another step that should be taken is this. I am not at all content to leave the question of the proper regulation of the greater industrial corporations to the courts. The courts have their very proper and necessary functions, but these functions are not to make a law or to devise a system, or a plan by which the great business of this country shall be conducted. If we are to provide a plan that plan must be made by the legislative and not by the judicial bodies. That plan must be placed in the hands of executive officers, not judicial officers, if it is to be efficiently carried out. Congress should provide a method similar to that which is provided for the national banks or for the railroads. It is quite immaterial whether it be a bureau or a commission, as the form is immaterial if the power be given. There must be an executive body which will primarily act as the Comptroller of the Currency, or as the Interstate Commerce Commission acts, so that the men engaged in industry will know beforehand exactly how they can act, what they can do, and further be assured that when they have complied with the law they will be free from litigation, so long as they continue to obey the law. In addition to that there should be a clear definition of those acts which

result in criminal proceedings. It is not fair to industry to leave uncertain or indefinite, the actions that may be considered crimes. It was well said this afternoon that trade had gone faster than the law in development during these last twenty-five years. We must now put law in harmony with sound business. The business men of this country must know whether they are dealing fairly or unfairly. We must adapt our laws to the industrial changes. We must not attempt to continue laws that are contrary to the wise industrial development of the age. That is why I have been opposed to the anti-trust law as it stands to-day. It has in it some excellent features, features that should not be changed, but it is likewise an unworkable law as it now stands. The recent interpretation by the Supreme Court did not relieve the law of its indefiniteness, nor do those decisions lay down definite rules for the organization, management and conduct of the great industrial combinations. A single state cannot control the great interstate corporations. The nation is the only sovereignty that can control them. The nation is the only government big enough and strong enough to cope with the modern-day industrial combination.

The basis of the proposed legislation should be publicity. Publicity is the foundation of honest dealing and of the right relation between industry and the public welfare. If you and I are permitted to hide behind a corporation, great or small, and be free from public inspection or supervision, we then have every opportunity to do that which will be unfair toward our competitors, unfair toward the public. Publicity takes away both the opportunity and the temptation to do wrong. Publicity makes possible an intelligent public opinion, based upon the facts. The mere fact that the railroads to-day are doing their business in the open makes it almost impossible for them to engage in the character of abuses that existed a few years ago. The national bank is open to public inspection and its directors will hesitate a long time before doing that which would bring upon them the criticism of their community.

With publicity as the basis, constructive legislation for the supervision, regulation and control by the federal government of the greater industrial corporations is comparatively simple. The experience we have had with the railroads and the national banks shows that the executive not the judicial branch of government is the proper agency for this work. The investigations that have already been made give

us facts upon which to start. There should be no further delay in enacting the legislation.

It was suggested in the discussion that the logical effects, the necessary result of such legislation would mean the fixing of prices. Now that may be true and yet it is not true that we should be afraid to take that step because of the logical conclusion. You will find that logical conclusions seldom happen in public affairs. Many elements will come in to change conditions from time to time; many new phases will develop which we in this day cannot appreciate; any or all of which may completely change the course that to-day seems clear. Therefore we should not hesitate to do that which we consider wise now, because we fear that in the future there may be some dilemma which looks insuperable at this time.

PART FOUR

*The Policy of Great Britain, Canada and
Germany as Compared with that of
the United States with Ref-
erence to Industrial
Combinations*

THE CANADIAN COMBINES INVESTIGATION ACT

BY W. L. MACKENZIE KING, C.M.G., PH.D.,
Former Minister of Labour of Canada and Author of "The Combines
Investigation Act."

The policy of Canada with respect to industrial combinations is embodied in the Combines Investigation Act enacted by the federal parliament in May, 1910. This measure is the outcome of the successful working of the policy of investigation as applied to industrial disputes in the Industrial Disputes Investigation Act of 1907. This act had demonstrated publicity to be a real factor in furthering justice, and public opinion, intelligently formed, an effective instrument in the protection of innocent third parties against public wrongs arising out of a conflict of private interests. The act had served to minimize industrial strife as between great combinations of capital and labor, and it was believed that a similar method applied to industrial combinations in their relation to the great body of producers and consumers might aid in the prevention or removal of possible abuses. With the experience of the workings of this measure before it, and confronted with a popular demand for more effective control of industrial combinations, the parliament of Canada re-enacted in 1910 many of the clauses of the act of 1907 respecting the method and procedure of investigation with such changes and modifications as were necessary, and supplemented these by provisions framed with a view of affording relief in accordance with the disclosed need through public inquiry. The administration of the Combines Investigation Act like the administration of the Industrial Disputes Investigation Act was entrusted to the minister of labour, and it was as minister of labour in the administration of Sir Wilfrid Laurier, I had the privilege of submitting to parliament the act in question, and of piloting it through the Canadian House of Commons.

The Industrial Disputes Investigation Act provides that where in industries in the nature of public utilities, a strike or lockout is threatened, before such strike or lockout can be legally brought on the parties aggrieved must apply to the government for a board of investigation, to which board, each of the parties may elect repre-

sentatives, the chairman being the choice of the two selected representatives or, failing their agreement, the appointee of the government. The board thus constituted has all the powers of a court as respects examination of witnesses under oath, the compelling of testimony and the production of documents. Its findings, failing its ability to effect a settlement of existing differences by conciliation, become the official utterance through which public opinion is shaped and brought to bear on the situation into which inquiry is being made.

Adopting these general features and applying them to the case of producers and consumers who believe that competition is being unduly restricted or prices unfairly enhanced, it is provided in the Combines Investigation Act that where as respects an alleged combine an order for a board of investigation is obtained from any high court judge in the dominion, the government must forthwith appoint such a board, and in order that the inquiry may be as fair and as complete as possible, it is provided that each of the parties interested, namely the applicants for a board, and the persons believed to be concerned in the alleged combine may be represented on the board, which as in the case of the boards under the Industrial Disputes Investigation Act has a membership of three, the third member, who is also the chairman and who must be a judge of one of the courts of record, being appointed on the joint recommendation of the two first chosen members of the board, or on their failure to agree, by the government through the minister of labour.

Before entering upon his duties, each member of a board is required to swear that he will truly, faithfully and impartially perform his duties, that he is a British subject and has no direct pecuniary interest in the alleged combine that is to be the subject of investigation, and that he has not received and will not accept, either directly or indirectly, any perquisite, gift, fee, or gratuity from any person in any way interested in any matter or thing to be investigated by the board, and that he is not immediately connected in business with any of the parties applying for the investigation, and is not acting in collusion with any person therein.

For the purposes of investigation, every board has all the powers vested in any court of record in civil cases, that is to say, the right to summon and examine witnesses under oath, and the right to require the production of such books, papers or other documents or things as the board deems requisite to the full inves-

tigation of the matters into which it is inquiring. Whenever in the opinion of the minister of labour the public interest so requires, the minister of justice may instruct counsel to conduct the investigation before a board.

To obtain in the first instance an order for a board of investigation, the Act provides that the application for such a board may be made to any high court judge by any six persons, British subjects, resident in Canada and of full age, who are prepared to declare that a combine exists in respect to any article of trade or commerce, and that prices have thereby been enhanced or competition restricted to their detriment either as consumers or producers, and such order must be granted by the judge where the applicants are able to present *prima facie* evidence sufficient to satisfy the judge that there are reasonable grounds for believing that a combine exists which is injurious to trade, or has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held. All reasonable and proper expenses incurred in connection with an application for investigation may be paid on order of the judge out of an appropriation set apart for this purpose by parliament. Provision is also made in the statute whereby the necessary expenses of the investigation itself are met by the state. Publicity as respects the matters investigated is secured through the inquiry, the whole or any part of which may at the discretion of the board (the board here meaning any two of its members) to be held in public, and through the publication of the report and findings of the board in the *Canada Gazette* and in the public press.

The inquiry concluded, in the case of the Industrial Disputes Investigation Act further action is left to the parties themselves, and such influences as public opinion may cause to be exerted. In the case of the Combines Investigation Act, the legislation goes further, and a variety of means of redress is provided, the selection of which will depend upon the nature of the restriction or evil disclosed. The application of these remedies may, in some cases, be made by the government, in others, by the parties interested without government intervention.

Whenever, as the result of an inquiry, it appears to the satisfaction of the government that a combine exists with regard to any article to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and it appears that such

disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the government, without further legislation, or securing the consent of parliament, may direct either that such article be admitted free into Canada, or that the duty thereon be reduced to such amount or rate as in the opinion of the cabinet will give to the public the benefit of reasonable competition.

In case it should appear from the report of any board, that the holder of any patent issued under the patent act has made use of exclusive rights or privileges thereunder "so as to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article of trade or commerce, or to unduly restrain or injure trade or commerce in relation to such article; or unduly to prevent, limit or lessen the manufacture or production of any article, or unreasonably to enhance the price thereof; or unduly to prevent or lessen competition in the production, manufacture, purchase, sale, transportation, storage or supply of any article, such patents shall be liable to be revoked." In this respect the legislation is intended to supplement the provisions of the patent law of Canada against the abuse of patent rights. Where it is reported that a patent has been misused to any of the ends above mentioned, the minister of justice may apply to the exchequer court for its revocation.

It is provided also in the case of any combine or person reported by a board as guilty of restricting competition or of enhancing prices, and who thereafter continues in a course against which the board has pronounced, or fails to carry out a recommendation a board has made, that such combine or person is guilty of an indictable offense, and liable to a penalty not exceeding \$1,000 per day and costs during which such person so continues to offend for each day after the publication of the board's report in the *Canada Gazette*, or such further extension of time as in the opinion of the board may be necessary.

The findings of a board may also serve as a basis for effecting other remedies in the case of offending monopolies or corporations. For example, where licenses have been granted under the Canadian Inland Revenue Act and it is known that such licenses are being used as a means of restricting competition, their cancellation under the provisions of this act becomes both possible and probable. Similarly, the withholding or withdrawal by parliament of subsidies to shipping or transportation companies becomes an all but inevitable sequence

of disclosures by investigation of a combine operating to the detriment of the public.

This legislation respecting combines is in addition to the anti-combine sections of the criminal code of Canada which are in their nature declaratory of the common law as it is in Canada and in England. Prior to the enactment of the Combines Investigation Act a number of prosecutions were entered under these sections of the code, but it was a subject of constant complaint that proceedings were slow, uncertain and expensive and subject to restrictions which made it extremely difficult to secure convictions. In its consideration of the subject, parliament did not deem it wise to rescind these sections, but left the criminal law as it stood, so that the penalties there provided might the more easily be enforced should they be deemed to be, after investigation of conditions, the most suitable and effective form of punishment of offenders.

It will be seen that in dealing with industrial combinations the parliament of Canada has shaped its policy in the light of three important considerations. First, that it is the possible inimical effects of combination and not combination as such that is to be aimed at in legislation. There is impliedly an admission that combination not only is not a bad thing, but that it is an inevitable and necessary development. Recognizing the industrial trend of the times, it is frankly conceded, that exception cannot well be taken by the state to a trust, or a combine, or a merger, as such, or to these industrial combinations doing all that is justifiable to further the interests of those whose capital they employ; on the other hand, it is not less clearly foreseen that the very necessity and inevitability of large combination mean that tremendous power becomes vested in the hands of a few, and that with this consolidation of great power, the sense of obligation on the part of those entrusted with the shaping of policies and management of affairs is likely to be felt primarily with reference to the concern itself, and those who are investors in it, and only secondarily to the public whose interests become subordinate to special corporate interests.

In the second place, it is tacitly implied that it is the duty of government to secure to the community some of the advantages which the community itself makes possible, and to conserve to those who compose the state, some of the benefits which through its agencies, the state itself helps to create. The advantages of large

organization are conceded, but it is recognized that the form of organization which enables wealth to become concentrated in the hands of a few, and secures great commercial opportunities and powers, is itself rendered possible only through conditions created by society of whose interests the state is the guardian, and by the direct agencies of government itself. To mention only what is most obvious. Organization on a large scale is alone rendered possible by the peace and security which the state assures, and in the maintenance of which, the heaviest expenditures of government are incurred. The facilities of transportation and communication, of banking, of credit, on which industrial combinations are dependent for their very existence, are the outcome of concessions made by the public, and are in the nature of agencies promoted by the aid, or at the expense of the state. In other words, an organized community is essential to the work of production and distribution and the extent of organization determines in large measure the possibilities and degree of both. In this view of the relation of industrial combination to the community, it becomes the duty of government to see that the interests of the many who compose the state, are not sacrificed to the interest of the few whose powers and opportunities they have helped to create.

Lastly, it is recognized that there are certain evils in the prevention and removal of which publicity is more effective than penalty, and that no single remedy can be found for all the possible abuses that may arise. A knowledge of facts and circumstances is a necessary preliminary to intelligent action, and as respects a set of conditions which may be affecting it adversely, the public may be expected once it is fully apprised of their nature and extent to devise some means to protect itself against continued injustice and wrong. Where public confidence and approval is an essential to business success, the fear of exposure is the real deterrent of wrong. This the legislation in question seeks to secure, and to do so at the expense of the state.

Since its enactment, the Combines Investigation Act has been thoroughly tested in the courts, the litigation arising out of an order granted in February of last year by one of the Quebec judges for an investigation under the act of the business of the United Shoe Machinery Company in respect of an alleged combine in the manufacture and sale of boot and shoe making machinery. The com-

pany sought to delay and prevent investigation proceedings by raising technical and other objections to methods of procedure, and the rights of the parties to secure, as well as the powers of the government to compel an inquiry in accordance with the provisions of the statute. This being the first case under the act, every latitude was allowed the company to test its effectiveness at all points. Having exhausted the courts of the Dominion in its applications for injunctions, and appeals, the company sought leave to appeal to the judicial committee of the Privy Council in England; this body, the highest and final court in the British Empire, refused to grant such leave and thus admitted the rights of the applicants to an inquiry, and the government's power to compel an investigation in accordance with the provisions of the statute. The board which had been constituted prior to the appeal, but whose proceedings were stayed pending the hearing of the application for leave to appeal, commenced its investigation immediately after the decision of the Privy Council refusing leave became known, and the inquiry has continued since. Until concluded it would be improper to comment on the proceedings before the board, but this much may be said, that the inquiry has demonstrated the effectiveness of the machinery provided by the act as a means of disclosing actual conditions. Moreover, this case having afforded the means of effectively testing the constitutionality and legality of proceedings under the act, the measure may be regarded as having found a permanent place in the statutes of the Dominion. Upon the report of the board, it will be seen whether in the public interest, the conditions it discloses will require alterations, and whether the remedies specified are sufficient to meet the public needs. It is altogether probable they will, but should the provisions of the act appear inadequate in any particular, parliament, having the precise conditions before it, may be expected to meet deficiencies by special legislation.

BUSINESS AND POLITICS AT HOME AND ABROAD

BY GILBERT H. MONTAGUE,
Counsellor-at-Law, New York.

In respect to industrial combinations, no civilized nation has muddled business with politics worse than the United States.

In American business and political life to-day, the most conspicuous factor is the campaign of Attorney-General Wickersham against the trusts. During the past three years, he has begun upwards of forty prosecutions under the Sherman Act—almost as many as were begun in the eight years of the Roosevelt administration, and nearly three times the total number begun by all the preceding administrations since the Sherman Act became law. During the past year, he has prosecuted suits under the Sherman Act against companies engaged in railway and steamship transportation, terminal facilities and tow-boat service, and against manufacturers and dealers in oil, tobacco, meat, groceries, butter, eggs, milk, sugar, paper, glass, powder, cotton, drugs, fertilizer, woolens, grain, box board, wall paper, lumber, coal, brick, steel, plumbing supplies, cash registers, coaster brakes, electrical appliances, shoe machinery, watch cases and kindling wood.

Edmund Burke exhorting Parliament on the eve of the American revolution to effect conciliation with America, declared that he did not know how to indict the whole American people. If he were alive to-day, he could learn from the Department of Justice.

Credible reports from Washington state that more than a thousand complaints against combinations in "restraint of trade" of commodities of all sorts, from telephones and wireless telegraphs to horseshoes and feather dusters, are now being investigated by the secret agents of the Department of Justice and that the department is now "being worked to its capacity." Recalling that the special appropriations for this work and for the enforcement of the Interstate Commerce Act have aggregated during the past nine years the enormous sum of \$1,300,000—more than one and one-half times the total amount paid annually in salaries to all the federal judges of the United States—Disraeli's epigram is realized: "The Government sinks into a police."

This "police," under the absolute and uncontrolled direction of the administration, exerts its full strength to enforce upon business the economic theory which the Attorney-General imputes to the Sherman Act. What the theory of the Sherman Act is, no one clearly understands. After twenty years of perplexity and heart searching, the Supreme Court has pleasantly sprinkled over it the sweet savor of reasonableness. Competition may be "reasonably" restrained, but may not be "unreasonably" restrained. Competition may be "reasonably" carried on, but may not be "unreasonably" carried on. Within these indefinite and nebulous limits, opinion may honestly differ so widely as to what is and what is not unlawful, that it is simply the economic theory of the attorney-general in office, and not any definite legal standard, that is enforced upon business.

The history of the Sherman Act proves this. Attorney-General Olney, in 1893, speaking of the Sherman Act, declared that "as every business contract or transaction may be viewed as a combination which, more or less, restrains some particular kind of trade or commerce, any literal application of the provisions of the statute is out of the question." Attorney-General Harmon, in 1895, stated that combinations and monopolies "although they may be unlawful, control production and prices of articles in general use, and cannot be reached under this law." In the following year he declared that the Sherman Act must be amended "if any effective action is expected from this department," and added that the "indefiniteness" of the law "is a serious obstacle in the way of its prompt enforcement." Nevertheless, during the ten years just past, the theory of the law as laid down by Attorneys-General Olney and Harmon has been completely repudiated by Attorneys-General Knox, Bonaparte, Moody and Wickersham.

Coming to more recent history, Attorney-General Bonaparte, in 1907, declared that the acquisition of the Tennessee Coal and Iron Company by the United States Steel Corporation afforded no ground for action by the Department of Justice; and in his annual report for 1908, declared, after a full recital of the facts regarding a proposed increase of railroad rates, that it was "inappropriate and against sound public policy" and not in "conformity to the intent of Congress, appropriate on the part of this department, to utilize proceedings under the so-called Anti-Trust Law to prevent the application of said rates." In the twenty-six months that he was in office, Attorney-

General Bonaparte began twenty-six prosecutions under the Sherman Act.

One month after he had left office, however, his successor, Attorney-General Wickersham, boldly announced a departure from this policy. Deploring that his predecessor had set to work with "newspaper clamor" to enforce the Sherman Act, and announcing that "some suits were instituted and some prosecutions commenced without sufficient consideration and without adequate cause," Attorney-General Wickersham declared that he would "be the last to authorize the institution of a criminal proceeding against men who, without intent to violate the law, have, nevertheless, acted in technical contravention of an extreme and a most drastic construction of that statute."

How far Attorney-General Wickersham departed from the policy of his predecessor, subsequent events soon showed. In 1910, he filed a petition under the Sherman Act against the Western Trunk Line Association, praying for an injunction to restrain the western railroads from advancing their rates—a complete repudiation of the deliberate determination that Attorney-General Bonaparte had announced two years before. In 1911, he further emphasized his departure from Attorney-General Bonaparte's policy by petitioning for the dissolution of the United States Steel Corporation on the ground, among others, that its acquisition of the Tennessee Coal and Iron Company was in violation of the Sherman Act.

How far Attorney-General Wickersham has abstained from that "newspaper clamor" and those "prosecutions commenced without sufficient consideration and without adequate cause" which he so deplored in the preceding administration; and whether in fact he has realized his ambition to "be the last to authorize the institution of a criminal proceeding against men, who, without intent to violate the law, have nevertheless acted in technical contravention of an extreme and a most drastic construction of that enactment" is a question which others may answer better than I. Judge Putnam, of the Federal Court in Massachusetts, suggested an answer, several weeks ago, when he threw out four of the five counts on which Attorney-General Wickersham had procured the indictment under the Sherman Act of various officers of the United Shoe Machinery Company, saying that the statute "is practically so indefinite . . . that criminal prosecutions like this at bar impose great hardship,

by terrorizing very considerable portions of the community who have acted honestly through the possible peril of enormous fines and terms of imprisonment even for very many years." With a rebuke to the attorney-general for "exploiting all doubtful questions" under the Sherman Act by criminal proceedings, Judge Putnam added: "Under the circumstances, we are unable to understand why the Department of Justice directs, and the President permits, criminal proceedings like this."

This "terrorizing very considerable portions of the community who have acted honestly," to quote Judge Putnam, this "exploiting doubtful questions" by criminal proceedings, this expenditure of hundreds of thousands of dollars in secret espionage of thousands of business men at the behest of disgruntled competitors and irresponsible complainants, this flood of prosecutions initiated by special agents and special assistants—over whom the higher officials in the Department of Justice at best can exercise only cursory supervision,—this arbitrary enforcement upon business of economic theories peculiar to the particular incumbent of the office of attorney-general—theories frequently at variance with the policies that his predecessors, and some times he himself, had previously promulgated for the guidance of the business community,—all this is absolutely subversive of decent respect for law. How unnecessary all this is, the experience of other nations shows.

In Germany, there is no prohibitory legislation on the subject of trusts. No official has received letters of marque to harass at will the high seas of commerce and flaunt in every channel of business the terrors of anti-trust statutes. The national policy of the German Empire favors, in the utmost degree, combinations designed to prevent ruinous competition and to promote industrial efficiency.

"In no country in the world," writes the American Consul General at Berlin, "has there been greater development of trade combinations, understandings of one form or another, than in Germany. Trade combinations which have been in existence for many years are extending their influence, and new ones are constantly being formed."

These combinations, syndicates, or cartels fall into three classes: First, are the "selling agreements," under which manufacturers agree not to sell their product below a specified minimum price

agreed upon by all the members of the cartel, and changing from time to time in accordance with the varying cost of production, and the general requirements of the market? Second, are the "sale syndicates," in which all members of the cartel pool their products for sale through a central committee, which not only fixes the selling price, but also apportions among the members the orders as they are received, according to the capacity of the various members, the quality of the goods ordered and the conditions of transport? Third are the "organized cartels," which include civil partnerships, commercial partnerships, "societies in commendam," "silent companies," stock companies, limited liability companies, and other corporate forms of organization which absorb and take up the shares of the constituent concerns, issue new stock, and consolidate the whole management under the absolute control of a central authority?

In Germany there are no laws which impose upon combinations or cartels requirements in addition to the provisions of the general law applying to various forms of corporate organization. Thus, if a "selling syndicate" opens a central office for the sale of the products of its members, this office, like any other business house in the "commercial register," must be registered with the proper local authority and be subject to the general law governing corporations; but no other formality of any kind is required.

The result has been notably successful. Dr. Ernst von Halle, professor in the University of Berlin, an authority upon American industrial combinations and the author of "Trusts in the United States," declares:

I do not hesitate to say that, according to my opinion, Germany would be already in the midst of a dangerous industrial crisis but for the modifying and regulating influence of our cartels in most branches of production and distribution. The country, with its dense population and increasing capital that seeks employment, could not stand that reckless speculation that would result from unrestrained competition. Modern production, by means of steam-driven machinery, cannot stand unlimited competition, which too often leads to the destruction of the value of large capital. Machine production requires close technical regulation, and does not admit of economic anarchy. So the effect of cartels seems to have been to initiate a more harmonious industrial system, permitting promoters to invest their capital in many instances with ease and safety, where without combinations they might have been too timid to assume the risks of competition. The relatively low quotations of German consols and other public securities may be partly attributed to the great number of safe investments in cartelized industrial undertakings.

. . . Opposition to trusts has nowhere been made a plank of political platforms or been used in election contests. Among officials, scientists and lawyers, cartels are not considered unwholesome or objectionable *per se*. The Supreme Court of the Empire (*Reichsgericht*), in March, 1898, officially recognized the economic justification of combinations and their right to legal protection unless they use unlawful methods of checking competitors who decline to join them.

As Dr. von Halle intimates, the satisfactory condition of industrial combination in Germany in no small measure is due to enlightened German jurisprudence. The laws permit industrial development; and, by specific prohibition of improper corporate action and illegitimate trade practices, repress all that is actually vicious in industrial life. The German Civil Code provides that a transaction which offends against public morals shall be void. The mere existence of a combination, however, has repeatedly been held by the highest courts of the German Empire to be no offense against good morals. "When in a branch of industry," declares the *Reichsgericht*, "the price of a product falls too low, and the successful conduct of the industry is endangered or becomes impossible, the crisis which sets in is detrimental, not merely to individuals, but to society as a whole. It is in the interests of the community, therefore, that inordinately low prices should not exist in any industry for a long time. The legislatures have often, and recently, tried to obtain higher prices for products by enacting protective tariffs. Clearly, it cannot be considered contrary to the interests of the community, when business men unite with the object of preventing or limiting the practice of underselling, and the fall of prices. On the contrary, when prices for a long time are so low that financial ruin threatens the business men, their combination appears to be, not merely a legitimate means of self-preservation, but rather a measure serving the interests of the entire community. The formation of the combinations in question, therefore, has been designated in various quarters as a means which, if reasonably applied to national economics, is especially adapted to prevent uneconomic, unprofitable and catastrophic over production."

According to the decisions of the highest courts of the German Empire, any concern, be it a cartel or an independent establishment, which resorts to boycotting, misuse of corporate franchises, or the cutting of prices against competitors for the express purpose of bringing about their financial ruin, is guilty of an offense against good

morals, in violation of the German Civil Code. No distinction, in the application of this rule, is observed between cartels and individual concerns; excepting, as the Supreme Court at Leipzig suggested, in 1904, that cartels, by reason of their greater power, must be held to a particularly strict accounting for their methods.

In 1905, the Imperial German Government published statistics showing that three hundred and eighty-five cartels then existed in Germany, exclusive of cartels fixing conditions of business other than prices, and exclusive of numerous informal combinations, the existence of which had not come to the knowledge of the government. About twelve thousand concerns were shown to be members of these cartels. In the brick industry were one hundred and thirty-two cartels; in the iron industry were sixty-two cartels; in the chemical industry were forty-six cartels; in the textile industry were thirty-one cartels; in the coal mining industry were nineteen cartels, and in the quarry industry were twenty-seven cartels. Imperial Commissions, which studied the subject between 1903 and 1906, reported that in their opinion no legislation restricting or controlling industrial combination was necessary.

With what temper German statesmen approach the subject was revealed nine years ago when these Imperial Commissions were first proposed in the Reichstag. Count Posadowsky-Wehner, Imperial Vice-Chancellor and Minister of the Interior, declared that the Imperial Government took a position neither for nor against cartels; and that an Imperial Commission which should investigate cartels could result only in their interest. "The syndicate question," he declared, "has for a long time had such an important place in the economic life that the imperial administration has considered it a duty to observe the movement carefully. For the present, the imperial government takes a position neither for nor against syndicates."

In 1897, when the Coal Syndicate was renewed in the face of the serious difficulties that had greatly prolonged negotiations, Baron von Rheinbaben, for many years Prussian Minister of Finance, and recently President of the Rhine Provinces, announced: "To my great delight, I am able to tell you, for the tranquilizing of our whole industry, that the Coal Syndicate has been renewed." This declaration was received with applause by the Right, the Centre and the Left. "A war of competition," he declared in his budget speech

"among all the separate concerns, each against the other, would be a state of things that we cannot wish to see revived."

The importance of industrial combination, in the fight for foreign markets, has always been realized by German statesmen. While the Imperial Commissions were conducting their investigations, Herr Moeller, Prussian Minister of Commerce, stated: "The problems connected with syndicates are difficult to solve, but to overthrow syndicates would destroy the ability of our country to compete abroad."

Herr Delbrueck, who succeeded him, and recently became Imperial Minister of the Interior, declared in the Reichstag in February, 1910: "In all measures planned to be taken against the syndicates, we must consider the fact that a non-syndicated German industry, a non-syndicated German banking system, would be powerless against syndicated foreign countries."

No abatement in official good-will toward industrial combination is discernible in Germany. In May, 1911, Herr Sydow, recently Prussian Minister of Commerce, declared that the Coal Syndicate had steadied prices and raised wages and added that "dissolution of the syndicate would result in social convulsions." In March, 1912, the Imperial Minister of the Interior emphatically expressed the same view.

The advantage which German industry derives from legislative tolerance and official good-will toward industrial combination, must inspire the envy of American business men. By a singular perversity, however, the features in the German situation which have been most loudly commended by American observers, have been a few spasmodic, unfortunate instances of governmental interference with German industry. Even with a well balanced legal system, which freely permits industrial combination and severely represses every improper and illegitimate corporate and trade practice, the beneficent results that naturally follow can, as German experience proves, be wholly lost when the government attempts arbitrarily to determine the direction of industrial development.

In 1893 the Coal Syndicate was reorganized, comprising ninety-four per cent of the coal mines in Westphalia and the Rhine Provinces. After various vicissitudes, the syndicate was again reorganized in 1903, to include all the mines excepting a few independent con-

cerns producing about 1,200,000 tons annually. In the following year, the Prussian Government, which already owned a few mines, sought to force its way into the Coal Syndicate by purchasing control of the Hibernia mine, which was a member of the syndicate. The other members of the syndicate, fearful lest the entrance of the government into the industrial field "would close their industrial independence," prevented the government from accomplishing its purpose. At present, the mines outside the Coal Syndicate produce annually about 6,000,000 tons, of which the mines of the Prussian Government produce about 2,000,000. The interest of the Prussian Government, as a coal producer, has recently led the Budget Committee of the Prussian Diet to adopt a resolution urging the government to join the coal syndicate. In answer to this resolution, Herr Sydow, Prussian Minister of Commerce, has informed the Prussian Diet that in determining upon its course, the government will be influenced by the allotment of production that the Coal Syndicate will be willing to assign to the government mines. To the private members of the Coal Syndicate this prospect is alarming; for by just such an entrance of the government into the industrial field was brought about the present condition in the potash industry.

From the first, the Prussian Government has been a leading member of the Potash Syndicate. Before 1883, the Prussian Government had erected state factories to manufacture the product of its potash mines, in order that it might strengthen its position to control prices. The Potash Syndicate, in that year, was extended until 1888, and Prussia, by virtue of its dominant position in the industry, obtained the right to veto any increase in the price of the product. Until 1909, by the terms of the syndicate agreement, the administrative powers of the syndicate were composed of the representatives of all the mines and factories. A selling agency, composed of two or three members, took charge of all the sales. All contracts were made through this agency, and the filling of the contracts was entrusted to the different members of the syndicate, who were paid directly by the consumers. Each member kept an account of the sums received, and from time to time the adjustment of receipts was made upon the basis fixed by the combination agreement. An increase of production could be compelled by the Prussian Minister of Commerce, after affording

an opportunity for a hearing to the Executive Committee of the combination. The Executive Committee, in the first instance, could fix the price of the product; but the Prussian Minister of Commerce could veto any increase in price; and after hearing the Executive Committee, he could fix exceptionally low prices for German farmers. The Prussian Minister of Commerce generally exercised this right, so as to favor domestic agriculture at the expense of foreign trade, and to reduce the exportation of potash. By the terms of the syndicate agreement, the mine owners were compelled to deliver specified quantities of potash to the manufacturers, and were forbidden to sell outside the combination. The manufacturers, on the other hand, were required to observe the rules of the syndicate regarding prices and production. Private concerns in the syndicate were compelled to deposit Prussian securities in large amounts to guarantee the faithful performance of their agreements.

In 1909, when the old Potash Syndicate broke down, several private members made important contracts with American interests, at prices considerably lower than had previously been enforced by the syndicate. The Prussian Government, which was interested as a producer in the potash market, was affronted. In retaliation, Herr Sydow, Prussian Minister of Commerce, presented to the Bundesrath a bill requiring all mines to join the Potash Syndicate, and forbidding new mines to be opened for twenty years. When the bill went to the Reichstag, it contained a proposal for a compulsory governmental selling agency, which should have the monopoly of selling and exporting potash. In some degree, the governmental monopolistic character of the measure was modified by the Reichstag. In the form in which it was passed in 1910, the Potash Law fixed the amount of production and the minimum price of the product, and provided that every two years the production of each concern must be redetermined, on the basis of the demand for the preceding years, and required that any concern producing more than its allotment must pay a prohibitive governmental charge.

In 1900, the old Potash Syndicate included only fifteen mines. In 1908, fifty mines were comprised within the syndicate. Since the Potash Law has gone into effect, the opening of new mines has been rushed, in order that the owners might come under the first

general allotment of production that will determine the allotment of each mine for the succeeding five years. Over seventy-six mines are now subject to the operation of the Potash Law. In 1909, before the old Potash Syndicate expired, the Berlin Chamber of Commerce reported that the mines in the syndicate were working only at thirty per cent of their capacity and that \$70,000,000 more capital was invested in the business than the market requirements warranted. By the operation of the Potash Law, this unsatisfactory condition has been greatly aggravated.

German statesmen are conscious of these dangerous tendencies. Herr von Bethmann-Hollweg, when Minister of the Interior, warned the Reichstag against any general regulation of various syndicates. Numerous attempts that have been made in the Reichstag to induce the government to undertake special legislation have been discouraged by the government. Herr Delbrueck, while Prussian Minister of Commerce, repeatedly deprecated such legislation on the ground that the whole subject was too mobile for governmental interference. As Imperial Minister of the Interior, he has repeatedly raised his voice against similar proposals. In the budget debates in 1911, and again in March, 1912, he has publicly deplored the proposal of a general law for the regulation of syndicates, and has expressed his firm conviction that the Potash Law has disappointed expectations. "The Potash Law," he recently declared, "does not encourage further experiments. We certainly did not wish it to be what, in practice, it has become."

In Great Britain, the tendency toward industrial combination has, in many trades, distanced both Germany and the United States. The history of the great thread combination of J. & P. Coats is a classic in trust literature. Beginning in 1826, with a small mill of James Coats at Paisley, the business extended, under the guidance of three generations of able business men, until in 1890 it was turned over to the limited liability company of J. & P. Coats, for £15,750,000. This combination comprised mills at Paisley, in England, and in Rhode Island. In 1895 and 1896, the combination acquired its chief rivals, with which it had for some time been allied through the Central Thread Agency, and attained control of sixteen plants in the United States, Canada and Russia, sixty branch houses, and one hundred and fifty depots. In 1897, fourteen firms, including plants located in France and Canada, combined to form the English

Sewing Cotton Company, and made an alliance with J. & P. Coats. In 1898, these allied concerns organized the American Thread Company, which acquired thirteen American firms. Since then the alliance has obtained control of the thread industry throughout the world. During the past year it has effected a combination with Belgian, Spanish, Austrian and Russian sewing thread factories, with a capitalization aggregating £50,000,000.

Similar combinations have existed in the iron and steel trade. When the famous International Rail Syndicate was formed in 1883, it included all but one of the eighteen British steel rail manufacturers, all but two of the German manufacturers and all the Belgian manufacturers. In 1904, to meet German competition, an agreement was made between the steel rail manufacturers of Great Britain, Germany, Belgium and France, by which the foreign trade was syndicated for three years, upon a basis which gave the various members specified portions of the market of the world. During the past year, twenty-three important steel concerns, who have suffered from a ruinously competitive market, have combined under the name of the English and Scottish Steel Makers' Association and, with the utmost frankness, have offered to all consumers a rebate of five shillings per ton on specified classes of material, provided the consumers purchase no material from manufacturers other than the members of the association. Whether this association will succeed is a question fraught with great interest to the entire steel industry in Great Britain.

Since the passage of the Sherman Act, such agreements and alliances have been condemned in the United States more bitterly than the ordinary single organization form of trust. The freedom with which such associations may be organized in Great Britain and the use of such associations to meet extraordinary, temporary trade conditions confirms the prophecy of a conspicuous English economist, who recently declared: "We may expect, in no very remote future, to see the iron industry governed by loose federations of great power, each large firm belonging to a number of associations according to the variety of its products; and there is a final possibility that these may unite into a general union."

The Industrial Commission of the United States found, in 1901, that aside from the sentimental hostility of a few radicals against industrial combination, "the strong feeling on the subject, which

has been manifested for some years in the United States, seems to have found only a very faint echo in England." The explanation is that in Great Britain no statutes regarding industrial combinations have been enacted or even proposed, and the unwritten law of the courts, in deference to the economic changes of the time, has actually been relaxed. Scarcely four years after Congress had passed the Sherman Act, the House of Lords, sitting as the highest court in Great Britain, stated the law in consonance with modern economic development, and forever removed from British industry the economic terrors which in American business the Sherman Act has thrown about the phrase "restraint of trade." Lord Morris announced in the House of Lords the broadened view as follows:

The weight of authority up to the present time is with the proposition that general restraints of trade are necessarily void. It appears, however, to me that the time for a new departure has arrived, and that it should be now authoritatively decided that there should be no difference in the legal considerations which would invalidate an agreement, whether in general or partial restraint of trading. These considerations, I consider, are whether the restraint is reasonable and is not against public interest. In olden times all restraints of trading were considered *prima facie* void. An exception was introduced when the agreement to restrain from trading was only from trading in a particular place and upon reasonable consideration, leaving still invalid agreements to restrain from trading at all. Such general restraint was in the then state of things considered to be of no benefit even to the covenantee himself; but we have now reached a period when it may be said that science and invention have almost annihilated time and space. Consequently there should no longer exist any cast-iron rule making void any agreement not to carry on a trade anywhere. The generality of time or space must always be a most important factor in the consideration of reasonableness, though not *per se* a decisive test.

In Great Britain as well as in Germany coercion, force and fraud, which comprise all the methods by which monopolists try to accomplish their purposes, are specifically punished by definite, simple statutes. Corporation laws, so strict as to put ours to shame, compel fair dealing with investors and full publicity to stockholders and the state. Whether the offenders be great or small, they are all governed by the same law. This remedy, in Germany and in Great Britain, has proved a complete solution of the trust problem.

The trust policy of Germany and Great Britain clearly proves that wholesale prosecution and repression of industrial combination

is not essential to healthful, economic, national development. The spectacle presented, it is said, in Chicago, after the jury had acquitted the beef packers of the charge of violating the Sherman Act, of a prominent governmental official bursting into tears, because the leaders of a great American industry had established their innocence of crime, has never, so far as can be found, been paralleled in any other civilized country in the world.

Germany and Great Britain illustrate the fact that laws specifically directed against corporate fraud and illegitimate competitive practices afford adequate protection to every class in the community, and that industry and commerce can attain their normal and proper development only in so far as they are free from governmental and political interference.

Had the Sherman Act never been enacted, our economic condition undoubtedly would be better to-day than it is. Since, however, the Sherman Act is not likely soon to be repealed, and since we must live under it, we ought promptly to take heed from Germany and Great Britain, and as soon as possible divorce politics from the enforcement of this law.

The meaning of the Sherman Act will never be clearly and plainly defined until a long period of development and litigation has elapsed. Throughout this period, as the history of the act for twenty years has shown, any enforcement of the act by successive attorneys-general of the United States can be little more than the enforcement of the economic theories peculiar to whoever happens at the time to be attorney-general. No matter how highminded may be the incumbent of that office, his position in the administration must subject him to political exigencies, that cannot fail to influence his economic theories regarding business.

Germany and Great Britain prove that the best interests of the entire community are attained by laws prohibiting fraud and coercion, in corporate matters and in business competition, and by complete tolerance and non-interference by the government in respect to industrial combination. The Sherman Act professedly violates this principle. By it the United States has committed itself to the policy of interfering with the national, economic development, throughout that vast, undefined area, in which competition may possibly be affected. By condemning every contract and combination in "restraint of trade," the Sherman Act fixes practically no

limit upon this policy of interference. To-day, the Sherman Act is a universal *lettre de cachet*, whose enormous powers are vested in the uncontrolled discretion of the Attorney-General of the United States.

The experience of mankind, no less than the experience of Germany and Great Britain already described, teaches that the economic theory which shall determine the industrial development of a nation must not be formulated hastily, nor by one man, but slowly, and by the steady growth and gradual agreement of national opinion. The Sherman Act expresses the determination of the United States to fix the limits beyond which trade shall not transgress. What these limits shall be is, to-day, as indefinite as were the duties of railroads under the first statutes which required them to serve everybody with adequate facilities, and at a reasonable price. Only time, experience and the evolution of enlightened public opinion can define the limitations intended by the Sherman Act. Certainly no single official, dependent upon the political exigencies of a political administration, can in the space of his brief incumbency in office determine for the whole nation, and for all time, the bounds which the American people, in the indefinite language of the Sherman Act, intended to fix for American industrial development.

An Interstate Trade Commission, having jurisdiction over all interstate trade and commerce, except transportation, and in other respects substantially similar to the Interstate Commerce Commission, has been earnestly recommended to Congress. Such a commission, of which all, or at least a majority of the members should be not lawyers but experienced business men, could work out the application of the Sherman Act to American industrial development, in much the same fashion that the Interstate Commerce Commission has worked out the application of the Interstate Commerce Act to American railroad development. This commission should be vested with the following powers:

1. All powers now vested in the Bureau of Corporations should be transferred to the Interstate Trade Commission. This should include the power to investigate and require reports from concerns now engaged in interstate trade and commerce.

2. Persons, firms and corporations proposing to enter into any contract or combination affecting interstate trade or commerce should have the right to apply to the Interstate Trade Commission

for an order determining whether the proposed contract of combination is in violation of the Sherman Act. The order of the Interstate Trade Commission should be subject to review in the District Court or the Commerce Court on application of any party in interest or on application of the government. Until reversed by the court the order of the Interstate Trade Commission should be effective. All acts done in pursuance of and before the reversal of any contract or combination should be deemed lawful and not in violation of the Sherman Act.

3. The disintegration and reorganization of all combinations adjudged to be in violation of the Sherman Act should be carried out under the orders of the Interstate Trade Commission. These orders should be subject to the conditions above described. The voluntary disintegration and reorganization of combinations in obedience to the Sherman Act, it may be noted, could be carried out under the orders of the Interstate Trade Commission pursuant to its powers described in the previous paragraph.

4. The prosecution of any person, firm or corporation by the Department of Justice under the Sherman Act should be commenced only after the Interstate Trade Commission shall have made an order recommending such prosecution. This order, however, need not be subject to review in the District Court or the Commerce Court.

This commission, like the Interstate Commerce Commission, should be non-partisan, non-political and substantially permanent.

By the establishment of such a commission, the administration of the Sherman Act and the governmental control of industrial combination would be divorced from politics, a government of laws would be substituted for a government of successive attorneys-general of the United States—heretofore often inharmonious with each other, and frequently inconsistent with themselves—and the industrial peace, for which we have cause to envy Germany and Great Britain, would finally be ours.

ATTITUDE OF GERMAN PEOPLE AND GOVERNMENT TOWARDS TRUSTS

BY RUDOLF ROESLER, LL.D.,
Consulting Engineer, New York.

Industrial combinations in Germany have been given many different names by business men as well as by popular writers, but there are really only two principal kinds: The "Kartell" and the "Interessengemeinschaft" (association of interests).

The *Kartell* may be defined as an association of independent establishments of the same trade, organized for the purpose of influencing selling conditions and prices in their trade. For whatever apparent purpose a Kartell may be formed, restriction of competition must necessarily result and a tendency toward monopoly be ever present. As a rule, no single one of the various independent owners or establishments which together form such a Kartell represents more than a small percentage of the whole industry. For example, the "Stahlwerksverband," which is a Kartell controlling ninety-five per cent of the steel trade, embraces thirty-six independent steel plants; the largest single plant in the "Stahlwerksverband," however, is the Phoenix Steel Works, which does only about eleven per cent of the whole steel business.

The Stahlwerksverband is one of the most highly developed Kartells and for that reason as well as for its great size and importance deserves more than a passing mention.¹ In it the sale of the entire output of all the members, which is limited by the Verband, is placed in the hands and control of one central body, called the "Stahlwerksverband-Aktiengesellschaft," i.e., the Steel-works Stock Company. This body might be called the selling agent. It is capitalized at \$100,000. The shares are held exclusively by its organizers.

The Stahlwerksverband, considered as a whole, is the largest industrial concern in all Europe with the exception of the Prussian-Hessian railroad. The Stahlwerksverband represents through the capitalization of its members about \$325,000,000.

Paragraph 2 of the syndicate agreement states that "the object

¹ This paper was written previous to the new development in the steel industry in Germany (May, 1912).

of the enterprise is the purchase and sale of iron and steel products of all kinds, the purchase of industrial enterprises of all kinds and the management of enterprises of all kinds intended for the storing, selling and transporting of iron and steel products as well as a participation in all such enterprises." The Stahlwerksverband in spite of the terms of this Syndicate agreement has not yet engaged in any enterprises except the purchase and sale of iron and steel products. This is in marked contrast to the coal syndicate which recently has taken a financial interests in the transportation of coal and in the coal business in general.

A highly developed Kartell, which like the Stahlwerksverband, has a central sales agency, is generally called "*Syndikat*." In a Syndikat there is often nothing left to the discretion of the individual plant owner but the method of production, for the purchase of raw material as well as the sale of the finished product may be determined by the association. And this is sometimes carried to the extent of dictating to each plant owner the quantity and quality of his production.

We often encounter the interesting fact that one concern is a member of a great number of Kartells according to the number of its products. The Phoenix Iron and Steel Works for instance belonged at one time to twelve different Kartells, such as the coal, pig-iron, rail, steel syndicates, etc. The disadvantage to the individual Kartells resulting from this diversity of interest and the conflicting influences which are thereby brought to bear within the Kartells themselves are apparent.

The second kind of industrial combination which is known as the "*Interessengemeinschaft*," or Association of Interests, is really the most developed form of combination and the closest approach to what in this country is called a trust, for in this association of interests two or more independent establishments amalgamate, usually with a profit-sharing agreement and sometimes with an exchange of shares.

Having thus defined the three most common terms relating to industrial combinations, namely "Kartell," "Syndikat" and "Interessengemeinschaft," we come now to the question of the attitude of the German people toward industrial combinations.

The majority of the German people of every class is in favor of industrial combinations.

This faith in industrial combinations seems to be due, first, to the understanding of the economic necessity of such combinations; second, to the fact that the development of the German industrial combinations has been logical, gradual and open. Such development was possible because, as will appear later, it was from the beginning fostered and not persecuted by the law-makers.

Combinations in Germany are economically due to the same fundamental conditions of modern industrial life that have obtained in America, namely, the increased facilities for communication and production based on science and technic, as well as the birth of a world market. Just as it was truly said of the American colonies at the time of the Revolution that they must all hang together if they were to avoid hanging separately, the present industrial situation demands combinations. They are not an invention of capitalistic egoism, but the children of necessity.

On December 31, 1908, all Kartells and syndicates in the iron trade ceased. Cut-throat competition immediately ensued. The manufacturers were happy if they earned expenses. The price for pig-iron went down to \$5 a ton. Chaos continued until the old adage that misery loves company found another application, and the warring producers joined together again in new agreements.

To illustrate that this growth was gradual it may be well to show briefly the steps through which the Kartells developed.

The simplest and crudest form of combination is the "Konditionenkartell." This is very often nothing but an informal agreement. Its purpose is to better and unify selling conditions, and to prevent credits of too long a duration, too high rebates, discounts, etc. Agreements of this kind may still be found in the textile industry, in which combinations have only recently begun to develop.

The second step is the "Price-Kartell." The members make up a price list and agree to respect not only certain selling conditions but also prices. Such agreements go sometimes so far as to divide the whole market among the members, by assigning to them certain territory, or by limiting them to a certain amount or kind of production.

I have already stated what the theorists call a "Syndikat;" it is the "Selling-Kartell" (Verkaufskartell).

But even the Kartell in its highest form is not always powerful enough to meet present-day contingencies, and the next step towards

more powerful and at the same time more economic concentration is the "association of interests" (*Interessengemeinschaft*). This is illustrated by the amalgamation which is constantly going on in Germany in the electrical and the chemical industries and in and between the coal and iron industries.

The fact that there existed four hundred and fifty Kartells in 1902, embracing about 12,000 concerns, which number has increased probably to nearly six hundred to-day, is ample proof that the producers in Germany are in favor of combinations. But as the real proof of the pudding is in the eating, or better, in the consuming of it, it is most significant that the consumers in general have shown their approval of this tendency. Thus we find associations not only among the industrial consumers, as appears below, but also consumers' associations among the retailers and even among individuals for their daily household necessities. The fact is that associations like co-operative companies in the United States exist to a very large extent throughout Germany.

It is a well-known fact that each stratum of producers is both a consumer and a producer. It has therefore resulted quite naturally, although Kartells were originally only producers or selling Kartells, that they soon became also consumer or buying Kartells in their relations with producers of materials in all earlier stages of manufacture.

For example, the different German railroads, the Prussian, Bavarian, Saxon, etc., have formed an association for establishing standards for rails and other materials with which the *Stahlwerksverband* has to comply. The railroads together need about one-fourth of its whole production. Their wishes, therefore, carry enough weight to be respected. The *Stahlwerksverband*, in its turn, has not only agreed upon its selling conditions and sales prices, but on the other hand, by reason of its large consumption of pig-iron, is able to dictate its conditions to the pig-iron syndicate, which again exerts the same double influence, first, toward the *Stahlwerksverband* as its customer, and second, toward the coal syndicate as the producer of its most important raw material.

These consumer Kartells may not always be considered proof of the fact that the consumers favor the Kartell, but they surely offer a very interesting indication of the attitude which consumers take. Some people might argue that the consumer Kartells are

formed for the purpose of fighting the producer Kartells and are therefore an evidence of direct opposition to the new condition of things. It is my personal opinion, however, that there is no basis at all for saying that consumers disapprove of industrial combinations; on the contrary, the consumers realize the advantages of the Kartells for the nation as a whole and consider their existence inevitable. The consumer Kartells are organized for this very reason, namely, to be able to deal advantageously with the inevitable.

It may be of interest to quote here some chamber of commerce resolutions. A recent report of the Chamber of Commerce of Bonn states that "it has to be emphasized again and again that combinations are absolutely necessary in our time and that they have proved for the most part beneficial. They alone have been able to check the boundless competition with all its dangers to social economy. They have eliminated competition by cutting prices and has substituted competition in economies of production. Even the commission houses and dealers who originally disapproved of them, in most cases have become convinced more and more that their own interests are, in general, best protected by them."

In the first year of the existence of the Stahlwerksverband the Chamber of Commerce of Luedenscheid, which is situated in one of the most important districts using semi-manufactured material, resolved, "that the industry suffers from the conduct of the Stahlwerksverband which exploits for its own benefit the conditions created by the protective tariff." The same chamber of commerce in its report of the following year no longer objected to the Stahlwerksverband and praised the "beneficial influence of the steadiness of prices as created by the coal syndicate."

The Chamber of Commerce of Bochum recognizes that "fair and moderate prices are best assured by large combinations."

It adds that "it has to be pointed out that the works which buy semi-manufactured products from the Stahlwerksverband and convert them have worked with good profit."

Inasmuch as I am a devout believer in the beneficial results which are to be obtained from a reasonable application of the principles of scientific management, and inasmuch as I realize how necessary it is for the introduction of scientific management in its highest form that each industry should, as far as possible, be concentrated horizontally as well as vertically, some people might call me prej-

udiced in my presentation of the subject. I therefore give you the following quotations from two of our socialistic labor leaders whom surely no one could accuse of being prejudiced in favor of employers' combinations:

Mr. Hue has frankly acknowledged "that combinations secure higher wages and better and safer conditions for the laborers; and more uniformity in their work."

Mr. R. Calwer said "that the organization of Kartells should not only be greeted but also aided by the socialistic party." It is an actual fact that associations of workmen have been in some cases a substantial aid in forming Kartells among the producers, as the workmen have considered it as the best method of obtaining better working conditions.²

The many papers and books written on industrial combinations, the essays and articles published in the "*Kartellrundschau*," a monthly publication entirely devoted to this subject, show that political economists take almost universally a favorable attitude.

Our theorists and progressive producers are beginning to recognize the fact that inasmuch as unification of management assures quicker response to market conditions and more ease in specialization at the different plants, a fusion or amalgamation—please do not call it "trust"—of the various independent producers is economically a more perfect organization than our Kartells.

Professor Conrad, from the University of Halle, says: "Only by means of a monopolistic union can a bird's-eye view of the world's demands be obtained and production regulated and divided up among the members so that the equilibrium of the world's industry and market will not be disturbed."

In the great majority of our industries, however, combination has not advanced beyond the Kartell stage. As I stated above, only the electrical, chemical and coal industries have so far united in a closer form than the Kartell.

II.

The second part of my subject treats of the policy which the government pursues in its relations with industrial combinations.

The attitude of the government is expressed in various ways.

² A recent example of this is to be found in a certain kind of engraving establishments (*Walzengravieranstalten*).

First, by legislation³ and by the decisions of courts interpreting the statutes; second, by the part which the government itself takes in the active management of industrial enterprises.

In the eighties of the last century the government found itself confronted by a new economic development. Convinced that this development had grown out of an irresistible natural law, the government did not attempt to check it, but tried to guide it into the ways most beneficial to the country's welfare.

When in 1903 the forming of large combinations in the coal mining industry, banking and inland navigation, attracted notice, the Imperial Department of the Interior started an investigation on this subject with the purpose of determining whether or not new and more stringent legislation was necessary. Debates presided over by the Department of the Interior were arranged between manufacturers, managers, officers of large Kartells, professors of political economy, etc. At the end of all these debates the conclusion was reached that although in some respects great industrial combinations were undesirable, nevertheless the laws which already existed were adequate to cope with the undesirable features, and further it appeared that the great advantages which result from them more than counterbalance the disadvantages; and that, therefore, neither private interests nor the interest of the country at large were being endangered by the development of these combinations.

At about the same period that these debates were taking place, test cases were instituted against certain of the Kartells. In these test cases the monopolistic tendencies of the Kartells were pointed out, and it was alleged that they were unconstitutional and in violation of the statutory trade regulations (*die Gewerbeordnung*) because by eliminating competition they interfered with the freedom of trade. The cases went through all the courts up to the highest court of the empire, the *Reichsgericht* in Leipzig, which handed down the fundamental decision that "the forming of Kartells was not only a justifiable manifestation of the instinct of self-preservation, but was a step actually serving the best interest of the country as a whole."

After that the Kartells were attacked on the ground that the agreements upon which they were based were void under Paragraph 138 of the Civil Code (*Bürgerliches Gesetzbuch*) as "gegen gute

³ The power to legislate concerning commerce and trade belongs to the empire not to the several states. (Art. 4 of the German constitution.)

Sitten," which, literally translated may be rendered as "contrary to good custom, or good morals." If the court had recognized this point of view it would have meant that each Kartell member might disregard its Kartell agreement with impunity and it would have made it impossible to enforce any of the penalties for non-fulfilment of the Kartell agreement.

It is of great importance for the Kartells that Book 10 of the Code of Civil Procedure gives the right and provides a method for taking all litigations resulting from a Kartell agreement out of the jurisdiction of the ordinary courts and substituting arbitration courts. The importance of this special jurisdiction is shown best by the fact that the enemies of the Kartells demand their abolition. A quick technical expert proceeding is provided hereby which decides definitely and does therefore not permit obstructions possible in the ordinary court procedure.

It was also alleged that the Kartells were forbidden by the law against unfair competition (*Gesetz gegen den unlautern Wettbewerb*)⁴ and also by the penal code (*Strafgesetzbuch*), but the courts refused to recognize any of these arguments and the Kartells still live and prosper.

Germany, as you know, has to-day a protective tariff. It has been suggested that the development of the Kartells could be checked by lowering the tariff and opening the German market more fully to foreign competition. No proposition intended to lower the tariff, however, is looked upon with favor by the German government and all these suggestions have been rejected.

⁴ It seems to me that the importance of this statute as a provision against undesirable features of industrial combinations especially is somewhat overestimated. It might be of value therefore to give the following outline of the statute:

Section 1 refers to competition which is considered against good morals (*contra bonus mores*).

Sections 3-10 refer to misrepresentation of facts in advertisements, etc., relating to the advertiser's own business.

Section 11 refers to the right of the Federal Council (*Bundesrat*) to demand certain standard weights and measures for certain goods *e. g.* beer.

Section 12 refers to the offer of gratuities or other advantages to an employee in order to obtain a favored position in connection with the purchase of goods.

Section 13 refers to sections 3 to 12 and sets forth the conditions necessary for civil liability.

Section 14 refers to damaging of reputation and credit by statements of unprovable facts, or Section 15 by statements against better knowledge.

Section 16 refers to the misuse of trade marks, names, etc., likely or intended to create errors or mistakes.

Section 17 refers to the disclosure of business secrets.

Section 18 refers to the use of business secrets by an employee for his own benefit.

Section 20 refers to offering inducements to disclose business secrets.

The rest of the thirty paragraphs define no more torts but deal largely with procedure.

Probably the most interesting feature of the government's policy toward industrial combinations is the active part which it takes in their management. In Germany, of course, the railroads, the telegraph and telephone, and the postal and express services are all government monopolies.

Furthermore, the government has its finger, sometimes its whole hand, in all the more important industrial combinations.

For example, in the potash industry, under the recent act, at the beginning of each year a total expected sale is determined and to each producer is allotted a certain percentage of this expected sale. It is also predetermined what part of each producer's allotted percentage may be sold in the domestic market and what may be exported. If the total sale of any producer exceeds his allotted percentage a duty must be paid to the government on this excess. Furthermore if a smaller quantity is sold by any producer in the home market than that provided for a proportionate decrease is made in the sales permitted in the foreign market. The price in the foreign market can never be lower than the price in the home market.

Again, in the coal industry, the government is influential because it is itself a large mine owner and operator. The government uses its own coal on its railroads. By an arrangement made within the last few months, the coal which it does not need for itself, it sells through the coal syndicate in precisely the same way that the other members of the syndicate sell.

The government, however, has reserved the right to withdraw from the syndicate, in case it believes that the syndicate is selling the coal at prices which are too low to give the government a fair profit, or on the other hand too high for the public welfare.

It has been said that the best policy to be pursued with combinations would be governmental enterprises strong enough to represent a working majority in the trade. In 1903 and 1904 the government started to follow this policy and wanted to obtain a larger influence in the coal mining industry. It wanted to acquire one of the largest mining companies, the "Hibernia," but secured only a minority, the owners of the remaining stock having been combined by the coal syndicate in a stock company under conditions which made it impossible for the government to obtain any more stock.

After this unsuccessful venture into "High Finance" the govern-

ment decided to give up this policy and practically to join the syndicate as shown above.

Coming now to the iron and steel industry, the government, although not a large iron and steel producer itself, as the manager and owner of the railroads is a customer, as mentioned before, for about one-quarter of the German output. Its power to influence the iron and steel trade is therefore manifest.

I am informed that a bill has just been introduced in the Reichstag whereby the government shall have the right of supervision over all Kartells, similar to the supervision which the various state governments in this country exercise over the insurance companies. The fate of this bill is of course still uncertain.

It seems to me that the speech of the Secretary of Commerce, Dr. Delbrueck, made in the Reichstag on the fourth of March, 1912, will show best, in a concise way, the government's attitude towards this matter, and its future policy. He said: "Even the gentlemen of the socialist party have well understood that syndicates are necessary in the modern development of business and to a certain extent useful. The accord between demand and supply bring about a stability of prices and consequently of wages. Therefore, as long as the syndicates do not overstep the bounds of the powers given them by the ordinary statutes, we have neither reason nor right to interfere with them.

"The united governments (Prussia, Bavaria, Saxony, etc.) comprising the Empire as represented in the 'Bundesrat' (federal council) are of the opinion that especially the coal syndicate and the Stahlwerksverband are members of our economic organization which cannot be dropped forthwith, even if someone should disapprove their policy in some particulars.

"I would regret it extremely if the agreement of the coal syndicate should not be renewed in 1916 when the present agreement expires.

"It is not possible to answer the general question whether or not the state as owner of industrial enterprises should join syndicates. This must be decided on the merits of each individual case. The right of the state to join a syndicate in case it believes it wise for economic reasons cannot be contested. It is assumed of course, that the economic activity of the syndicate in question will not bring the government into discord with its economic and political

functions. Sometimes it may be even the obvious duty of the government to enter into a syndicate if it can thereby further important political and economic ends."

In summing up, I should like to say that the German people and the German government seem to feel that the tendency toward combinations in all forms of industry and business is a result of modern scientific and economic conditions; that combinations are necessary for the soundness of the economic life of the country by securing stability in commerce and sustaining thereby its buying capacity; that the forming of associations of similar interests, aided by a reasonable tariff, is desirable and appropriate to benefit not only the manufacturer but also the workman and the consumer; that the tendency toward combinations is not a caprice of finance or the result of the selfishness of the few; that it is not only national but international; that it is here to stay, and that it is only a question of regulating the stream, not of damming it.

POLICIES OF GERMANY, ENGLAND, CANADA AND THE UNITED STATES TOWARDS COMBINATIONS

BY FRANCIS WALKER,
Bureau of Corporations, Washington.

According to their laws respecting combination, the four countries which are under consideration at this time may be placed in three classes as follows: (1) complete legality of combinations, as in the case of Germany; (2) invalidity of combinations under the civil law, as instanced by England, and (3) prohibition of combinations under the criminal law, as illustrated by Canada and the United States. As combinations flourish in all of these countries, it is evident that the laws are not the sole determining conditions. Moreover, the general civil and criminal legislation of a given country does not cover all the important legislation on this subject, while the policies of the various governments have important application in other directions than in legislation.

A complete understanding of the policies of the several countries would require a consideration of various economic and political conditions which can only be suggested here. Among these factors may be mentioned the character of the country's industries, the system of railroad ownership or control, the tariff policy, the ownership and control of mineral rights, the extent of government industry, and, besides these and similar conditions, the general social and political conditions of the country. Moreover, a proper appreciation of governmental policy would require information as to the extent and character of the industrial combinations which are found in the country, and particularly as to their power or tendency to destroy their competitors, to exploit labor, or to extort exorbitant prices from the consumer.

Germany

Within the last century Germany changed from a policy of strict regulation of industry to one of extreme liberality. Thus the Prussian laws formerly established a very complete control of the mining industry with the regulation of output and prices, and

this system prevailed down to the middle of the nineteenth century.¹ The German states were then, and still are, conspicuous for the importance of industrial enterprises owned and managed by the government. Nevertheless the doctrine of free industry and individual enterprise obtained a considerable hold in Germany towards the middle of the nineteenth century, and a system of industry was developed which left but little restraint on private business activity and freedom of contract.

In particular the laws prohibiting or restricting industrial combinations disappeared almost entirely from the statute books. The recently enacted civil code of Germany, which was adopted when the extent and significance of the cartel system was well understood, contains no express provision against them.² Moreover the courts have interpreted the industrial code, which in its very first section provides that industry shall be free, as not inconsistent with the formation of voluntary industrial combinations.³ Neither are there any general prohibitions in the criminal code against industrial combinations; the only important exception is found in the law of Alsace-Lorraine, which still retains the French penal code. Articles 419 and 420 of this code prohibit, for example, combinations tending to make prices different from what they would be under free competition. No judicial cases, however, have occurred under this law. Exceptions are also found in the laws prohibiting combinations in bidding on public contracts, etc., namely, in Prussia, Hesse and Alsace-Lorraine. Although these laws are generally regarded as dead letter, they are not wholly without practical application.⁴

The criminal law giving no practical hold against cartels, their opponents have often attacked them under the civil code, and particularly section 138, which declares null and void all jural acts (*e. g.*, agreements) which are repugnant to good morals. The imperial court, however, has never condemned a cartel agreement as

¹ Oldenberg: *Studien über die rheinisch-westfälische Bergarbeiterbewegung*. Schmollers Jahrbuch, Bd. 14 (1890). Hundt: *Geschäftliche Lage des Steinkohlen-Bergbaues*, Achter Allgemeiner Deutscher Bergmannstag, 1901, pp. 173-174.

² Menzel: *Die Kartelle und die Rechtsordnung*, 1902, p. 16; Landesberger: *Verhandlungen des Sechszwanzigsten Deutschen Juristentages*, 1903, p. 350. For a brief statement of German law and decisions see Walker: *The Law Concerning Monopolistic Combinations in Continental Europe*, *Political Science Quarterly*, Mar., 1905.

³ Urt. v. 25 Juni, 1890. Entsch. des R Ger. in Civilsachen, Vol. xxviii, p. 244.

⁴ *Denkschrift über das Kartellwesen*, II Teil, Berlin, 1906, pp. 28-30. Cf. *Kartell-Rundschau*, Jan., 1910, p. 30; Feb., 1910, p. 93; Oct., 1908, pp. 858-859.

such, although in some of its judgments it has indicated a theoretical limit to the lawfulness of such agreements, as for example, where the aim was monopoly and extortion.⁵ This theoretical limit is evidently of little practical significance in view of the monopolistic power and extortionate price policy of the Coke Syndicate in 1900-1901.⁶

An interesting case occurred recently in one of the lower courts in which a cartel was declared to be invalid. It appears that a brewer's cartel had been formed in a certain locality for the sale of beer, which fixed both the wholesale price and the resale price of the dealer. Dealers who did not conform thereto were not to get any beer, "regardless of old or current agreements." The lower court said that the cartel had practically established a monopoly, and in refusing to supply dealers who did not obey its behests, in order to put them out of business, was coming close to the limit of legality. When, in addition to this, it imposed on its own members the requirement that they should violate their existing agreements, it put itself beyond the pale of the law.⁷

In 1896 a law was enacted forbidding unfair competition, and this was somewhat amplified in 1909. Such laws, which are common to most states of Western Europe, are aimed almost entirely at malicious, fraudulent and dishonest business practices, such as circulating false reports, bribery, lying advertisements, betraying business secrets, etc. An important amendment was made to the law in 1909, particularly in establishing a new first section in the following terms:

Whoever in business affairs adopts methods of competition which are repugnant to good morals may be subject to a claim to desist therefrom and to pay damages.⁸

It does not appear that there have been any important cartel cases under this law. The most conspicuous cases appear to have been in connection with misleading advertisements. Nevertheless this new section may have some significance in the future, especially in view of a tendency at the present time to require a higher code of business morals than has been hitherto prevalent. This law does

⁵ Urt. v. 4 Feb., 1897. Entsch. des R. Ger. in Zivilsachen, Vol. xxxv ii, pp. 136-8.

⁶ Cf. Walker: *Monopolistic Combinations in the German Coal Industry*, New York, 1904, p. 322.

⁷ *Kartell-Rundschau*, Mar., 1911, pp. 206-208.

⁸ *Gesetz gegen den unlauteren Wettbewerb*, vom 7. Juni 1909. *Reichsgesetzblatt*, 1909, p. 499.

not prohibit price-cutting or boycotting, both of which are lawful in Germany, provided such acts are committed as a matter of business policy and not from a mere malicious purpose to injure another.⁹

The most remarkable feature of German policy is found in the direct encouragement given to certain cartels. In some instances this involves the participation of the government itself in such combinations, and sometimes even the grant of monopolistic privileges to private interests. The participation of the government in such combinations depends of course on the fact that it is likewise engaged in the industry in question. Illustrations are found chiefly in mining enterprises, as, for example, the old alum syndicate in which Prussia was interested (1836-1844) and the potash syndicate in which several German states have participated, and which recently has taken on a new form.

The imperial law of May 25, 1910, concerning the sale of potash,¹⁰ establishes practically a legal monopoly and a government regulation of prices. This is accomplished especially by provisions of the law which, (1) prohibit the sale of potash, except as prescribed by the law, (2) fix the total quantity which may be sold and the proportions to be sold in domestic and export trade, (3) fix the share in such sales for each producer, including government-owned works, both for domestic and export sales, (4) fix the maximum prices to be charged in the domestic market, and, (5) place a prohibitive tax on all sales in excess of the allotted quotas. The conditions established by this law have facilitated the reorganization of the old potash cartel, which includes most of the private producers as well as several state enterprises. The motives of this law were fiscal, economic and political. Destructive competition between the producers was prevented and better financial results secured to them thereby. The extravagant overproduction in the potash industry was checked. Incidentally may be noted a very peculiar provision in the law tending to prevent a reduction in the wages of labor. The system of regulating production and limiting domestic prices has had the intended effect of making export prices much higher than domestic prices. This is made possible chiefly by the fact that Germany has practically a monopoly in the production of potash. The govern-

⁹ Cf. *Kartell-Rundschau*, April, 1908, pp. 255-256; *Frankfurter Zeitung, Abendblatt*, Mar. 20, 1912, p. 4.

¹⁰ *Gesetz über den Absatz von Kalisalzen*, vom 25, Mai 1910. *Reichsgesetzblatt*, 1910, p. 775.

ment was anxious to prevent unduly high domestic prices, because potash is an important agricultural fertilizer, and the policy of the government is especially directed to protect and promote the agricultural interests.

While the potash law is the best known and most pronounced effort of the German government to give monopolistic privileges to industry, it is not the only one. The method of taxation of spirits, established years ago (1887), introduced the principle of allotting quotas of output to the several producers.¹¹ This law has been revised more than once, but the same principle has been continued. By the present law¹² the excise tax for the quantities allotted amounts to 1.05 marks per liter of alcohol, and for quantities in excess thereof to 1.25 marks per liter. This indirect regulation of production gives a quasi-monopolistic character to the industry, and has facilitated the formation of a cartel among a very large number of agricultural producers of spirits.

Similar tax laws, indirectly limiting the quantity of production and facilitating the formation of cartels, are found with respect to beer and matches. A law respecting the taxation of beer¹³ provides for a progressive tax according to quantity of output, and, furthermore, for an increase in the tax rate of from 25 to 50 per cent for new breweries. The law for the taxation of matches¹⁴ has a similar provision, namely, an increase in the tax rate of 20 per cent on matches produced in new factories, or in factories in which there is shown to be an increase in output over the average output of the three preceding years, in respect to such increase. Apparently as a direct consequence of this law regarding the taxation of matches a cartel was formed among the producers embracing 82 per cent of the total output, but it did not last long owing to unfavorable market conditions.¹⁵

In the last three cases cited the chief purpose of the government, apparently, was fiscal, the regulation of the output being established to enable the producers to obtain increased prices and so to shift

¹¹ *Kontradiktorische Verhandlungen über Deutsche Kartelle*, (Spiritus) Fünfter Band, Berlin, 1906, p. 59.

¹² *Branntweinsteuergesetz*. Vom 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 661.

¹³ *Gesetz wegen Änderung des Brausteuergesetzes*. Vom 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 697.

¹⁴ *Gesetz betreffend Änderung im Finanzwesen*. Vom. 15, Juli 1909. *Reichsgesetzblatt*, 1909, p. 757.

¹⁵ *Kartell-Rundschau*, Jan., 1911, p. 12.

the burden of the tax on to the consumer. In the case of the spirits tax law the desire to afford encouragement to the agricultural interests was probably an important motive also.

It is of interest to note that Germany is not the only country which has directly or indirectly endeavored to promote a monopolistic organization of industry. Notable examples are found in the sugar industry in Russia and Austria, in the petroleum industry in Roumania and in the sulphur industry in Italy.¹⁶

The German government has intervened in various other ways in the management of industrial combinations, in some cases to bring about a settlement of disputes between cartels and their competitors or customers, in other cases to inquire into alleged abuses, and, finally, in certain cases, to counteract by administrative action the injurious effects of certain combinations. Thus in the steel industry the Prussian government has intervened to reconcile the differences of the integrated concerns with the straight rolling mills. The elaborate cartel investigation of the imperial government, initiated in 1902, was partly undertaken with this purpose and partly to obtain more extensive information as to the character of cartels and the necessity of government intervention.¹⁷ Again in 1901 the Prussian government made a special investigation of the coal cartels.¹⁸

Administrative measures to control the conduct of cartels have not been numerous. It should be noted, however, that the Prussian railway administration has at certain times (1901, 1908) admitted foreign coal at specially low rates (raw materials rate) in order to modify prevailing high prices of the Coal Syndicate.¹⁹ A complementary measure, namely the suspension of the specially low railway rates on coal exports has also been applied (1908).²⁰ With a similar purpose in view the Imperial naval administration in 1908

¹⁶ For Russia see Rutter: *International Sugar Situation*, U. S. Dept. of Agriculture, 1904. For Austria see Walker: *The Sugar Situation in Austria*, *Political Science Quarterly*, Dec., 1903. For Roumania and Italy see *Denkschrift über das Kartellwesen*, IV Teil, Berlin, 1908, pp. 142-154.

¹⁷ *Kontradiktorische Verhandlungen über Deutsche Kartelle*. The results of this investigation which covered a number of different industries such as coal, iron and steel, paper, spirits, etc., were published in several volumes.

¹⁸ *Bericht der X. Kommission betreffend die Misstände bei dem Verschleiss der Kohlenproduktion*. Haus der Abgeordneten, 19 Legislaturperiode III Session 1901.

¹⁹ Calwer: *Handel und Wandel*, 1900, pp. 84-85; *Bericht des Rheinisch-Westfälischen Kohlen-syndikats*, 1901, p. 9; *Kartell-Rundschau*, Oct., 1908, p. 797.

²⁰ *Kartell-Rundschau*, Oct., 1908, p. 797; Mar., 1910, p. 172.

asked for bids on coal supplies from British producers, and thereby obtained lower prices from the Coal Syndicate.²¹

A much more significant step was the acquisition of coal fields in the Ruhr district by the Prussian government in 1902, in order to obtain more independence in procuring its own supplies and a greater influence on the market prices. The Prussian government was already a large producer of coal in the Saar district and also in Upper Silesia. In the latter region it fixed prices more or less in harmony with the private producers. In 1904 an attempt was made to extend its holdings in the Ruhr district by the secret purchase of the shares of one of the largest coal companies (Hibernia) in the stock market, but this effort resulted in a complete fiasco.²²

The Coal Syndicate invited the Prussian government to become a member of the syndicate and offered it a veto on the advance of coal prices, but this was declined.²³ The policy of the Prussian fiscus with respect to coal prices was not usually any more moderate than that of the Coal Syndicate. However, at the end of 1908 it proceeded to lower the price of Saar coal before the Coal Syndicate had made any decrease, and this was regarded as a very significant political act.²⁴ Although the Prussian government's mining administration in the Ruhr had repeatedly refused to enter the Coal Syndicate, in May, 1911, the Budget Commission recommended that this should be done for the purpose of obtaining a greater influence over coal prices.²⁵ This recommendation was first put into effect during the present year; the Prussian mining administration is now a member of the Coal Syndicate and sells whatever coal the Prussian or Imperial governments do not require through the regular selling organization of the Syndicate.²⁶ It retains the right, however, to withdraw from this relationship whenever it deems it for the public interest. This agreement affects only the Westphalian coal mines of the government, but it is provided that, if no similar arrangement is consummated with respect to the government's coal production in the Saar district, then this arrangement will lapse at the end of 1912, otherwise it will be continued till the

²¹ *Kartell-Rundschau*, Mar., 1910, p. 172.

²² Cf. Walker: *The Hibernia Fiasco*, *Quarterly Journal of Economics*, 1905.

²³ *Schriften des Vereins für Socialpolitik*, 116 Bd. *Verhandlungen der Generalversammlung in Mannheim*, 1905, pp. 282-283.

²⁴ *Kartell-Rundschau*, Mar., 1910, p. 172.

²⁵ *Kartell-Rundschau*, May, 1911, p. 355.

²⁶ *Kartell-Rundschau*, Feb., 1912, p. 130.

end of the present syndicate, which continues till 1915. Some regard this agreement as giving the government a powerful influence over the price policy of the syndicate, while others declare it to be a virtual surrender by the government of its policy of preventing the syndicate's maintaining a monopoly in the coal trade, and point to the fact that the syndicate is aiming at a control of the sale of Saar coal also.²⁷

A very important act of economic policy which tends to increase the power of the government over industry, and thus indirectly to place some restraint on the growth of combinations, was the revision of the mining laws in 1907. By this law the almost unlimited right of private persons to take up unoccupied mineral deposits was greatly restricted with the purpose of retaining a part of these natural resources for the direct benefit of the government and the people as a whole. The socialists hailed this as a "triumph of socialistic principles."²⁸ ✓

In considering Germany's policy towards combinations three general conditions should be noted. First, Germany has a general company law which hinders financial excesses and promotes publicity, although it does not restrict consolidations or holding companies. Second, the railroads are almost exclusively owned and operated by the state or federal governments, which not only prevents the encouragement of monopolies through discriminatory rates, but also gives to the several governments a powerful influence over many branches of industry. Third, the several state governments are producers of various raw materials, including particularly coal, potash and lumber, which gives them an important influence in industry. It must be conceded, however, that this power has generally been utilized for financial profit rather than for the benefit of the consumer.

In fact, the policy of the German government, on the whole, has been rather to stimulate industry than to regulate it. This general protective policy, which is illustrated primarily in high customs taxes, is reflected also in substantial encouragement of cartels. In both of these directions its solicitude has been chiefly for the agricultural interest which is the main support of the existing social and political order. The conservative political parties (Cen-

²⁷ *Kartell-Rundschau*, Feb., 1912, p. 130.

²⁸ Hue: *Sozialistische Monatshefte*, Apr., 1907, p. 17.

trum, Conservative, Bund der Landwirte) have often attacked the cartels, particularly those in the industrial branches, and recommended their regulation,²⁹ although they have eagerly promoted similar organizations intended to benefit agricultural interests. The socialists and the national liberals have pursued a variable policy,³⁰ although the former have sometimes favored the cartels on the theory that they were simply paving the way for socialism. The government ministers have generally upheld them, and in some cases have been their ardent supporters.³¹ This has not prevented them, however, from developing the policy of government ownership. A few years ago a Bavarian minister declared that if conditions did not improve the Bavarian government would not hesitate to buy coal abroad or to build a rail mill.³² In some branches of industry and trade, particularly in those in which cartels have not been successfully established, there is a good deal of opposition to the cartels,³³ not to speak of a general hostility from a large but more or less nondescript class generally known as the consumers.

Taking the attitude in Germany as a whole, however, there is no doubt that it has been favorable to cartels. The characteristic feature of German policy in a positive sense may be described as a strong tendency towards the extension of government ownership and government enterprise. A striking illustration is found in the present effort of the government to establish a government monopoly in the sale of petroleum,³⁴ which has been brought about partly by the opposition to the Standard Oil Company's control of the business in that country, and partly by the fact that German capital is largely interested in oil production in Roumania and Galicia, but has not had much success in marketing it in Germany.

England

In England monopolies granted by the crown to private individuals were partly abolished in the reign of James I, and practically all were done away with before the end of the seventeenth century.

²⁹ Cf. *Kartell-Rundschau*, Jan., 1908, p. 24; Apr., 1908, p. 250; Mar., 1909, p. 220.

³⁰ Cf. *Kartell-Rundschau*, Oct. 31, 1905, p. 577; Jan., 1908, p. 2; Mar., 1908, p. 175; April, 1908, p. 251.

³¹ E. g. Rheinbaben, Cf. *Kartell-Rundschau*, Feb. 28, 1904, p. 286.

³² *Kartell-Rundschau*, Aug. 25, 1904, p. 619.

³³ Cf. *Kartell-Rundschau*, 1904, Mar. 30, 1904, p. 364; June 30, 1905, p. 339; May, 1907, p. 285; *Iron and Coal Trades Review*, Sept. 22, 1911, p. 431.

³⁴ Cf. *Oil City Derrick*, Mar. 25, 1912 (letter from Michael Murphy, president of the Pure Oil Co.).

The ancient criminal statutes against monopolistic practices, such as regrating, forestalling and engrossing were repealed by the act of 12 George III cap. 71, and the law of 2 and 3 Edward VI against conspiracies and agreements to fix prices, and the wages and hours of labor was repealed by the act of 5 George IV cap. 95. Under the common law, however, agreements in unreasonable restraint of trade remained unlawful until the law was amended by the act of 7 and 8 Victoria cap. 24. The only relic of these criminal laws, apparently, is the prohibition against attempts to affect prices by spreading false reports or by preventing goods from being brought to market by force or by threats. Practically, however, the only law affecting combinations to-day is the ancient common law respecting agreements in unreasonable restraint of trade, which are null and void.³⁵

A striking exposition of English judicial opinion on this subject is the following excerpt from the opinion of Bowen, L. J., of the Court of Appeals, in *Mogul Steamship Co. v. McGregor Gow & Co. et al.* (1889):³⁶

If indeed it could be plainly proved that the mere formation of "conferences," "trusts," or "associations" such as these were always necessarily injurious to the public—a view which involves, perhaps, the disputable assumption that, in a country of free trade, and one which is not under the iron régime of statutory monopolies, such confederations can ever be really successful—and if the evil of them were not sufficiently dealt with by the common law rule, which held such agreements to be void as distinct from holding them to be criminal, there might be some reason for thinking that the common law ought to discover within its arsenal of sound common-sense principles some further remedy commensurate with the mischief. Neither of these assumptions is, to my mind, at all evident, nor is it the province of judges to mould and stretch the law of conspiracy in order to keep pace with the calculations of political economy. If peaceable and honest combinations of capital for purposes of trade competition are to be struck at, it must, I think, be by legislation, for I do not see that they are under the ban of the common law.

The policy of the law, therefore, is to encourage competition, but it does not prohibit combination. Furthermore, while agreements in unreasonable restraint of trade are invalid, the English courts give a wide scope to the freedom of contract, and they have never interfered with a consolidation of competing industrial enterprises into a single company, on this ground.

³⁵ Cf. *Mogul Steamship Co. v. McGregor, Gow & Co. et al.*, House of Lords, 1892, Appeal Cases, p. 25.

³⁶ 23 Queen's Bench Division (1889), p. 598.

The chief exception to this general policy in England is found with respect to railroads, a branch of business which scarcely belongs to the present topic of discussion. Nevertheless it may be noted that England recognized at an early date the monopolistic character of this business and legislated accordingly. Railroads were permitted to make agreements with respect to rates, but the rates were required to be reasonable, discriminations between persons were prohibited, and strict governmental supervision was established to insure the enforcement of the law. Recent efforts at extensive railroad amalgamation resulted in the interference of the government to prevent their accomplishment.

So also in respect to certain other public utilities, such as gas and water supply, docks and street railways, the strong monopolistic tendencies of the business were recognized, and private enterprises were placed under public regulation or public enterprises substituted for them. Even more remarkable developments of government intervention have taken place with respect to housing problems, but these municipal questions are hardly within the scope of the present subject, although significant with respect to the principles of government functions.

In the police regulation of the liquor traffic the British government limited the number of licenses for the retail trade to such a degree as to give to such licenses the character of a special privilege of a quasi-monopolistic nature and also considerable commercial value. The trades affected thereby have claimed that these licenses were property rights which could not be justly withdrawn without compensation. In this contention they received the support of the conservative party and a political contest ensued on this question which was one of the causes for the recent constitutional crisis.

In a field of monopoly which relates more directly to industry, namely, patents, the necessity of controlling harmful tendencies has been recognized also, though only at a recent date. By the Patent and Designs (Amendment) Act, 1907, restrictions are placed on the rights of the patentee which render agreements in restraint of trade and agreements contrary to public policy, null and void. Important limitations on patent monopolies are found in other countries, but the English law is of peculiar interest at the present time, and for that reason the following quotation is made from an official statement concerning this law:

The act also for the first time makes unlawful any restrictions or conditions attached to the sale of the patented article or process which are in restraint of trade and contrary to public policy. Previously some of the conditions imposed by patentees had prohibited purchasers, or licensees, from using any other articles of a similar character or making use of the inventions of other patentees, and had bound the purchasers or licensees, for very extended periods, to purchase similar articles for the purposes of their trade from the patentee or his nominees. For the future, conditions such as these will be null and void, and means have been provided whereby existing contracts containing these conditions can be determined by either party on payment of reasonable compensation.³⁷

Ordinary industrial combinations are, as already shown, either tolerated, as in the case of pools, or given full legal sanction, as in the case of amalgamations or consolidations of companies. Government intervention in their affairs is practically limited to the requirements of the company law, which, however, goes far to promote publicity and to prevent such financial abuses as fraudulent promoting and stock watering. The holding company is permitted and it is frequently used to consolidate the control of companies.

Apart from the postal and telegraph service and municipal public-service enterprises, the government practically abstains from direct participation in commercial or industrial activities. The most marked departure from this principle, apparently, is found in the agreement of the British government with the Cunard Steamship Company. In consideration for conducting its business according to certain rules and putting certain vessels when needed at the disposition of the Admiralty, the Cunard Company receives a large loan at a low rate of interest, and certain cash subsidies. The British government holds one share of the Cunard Steamship Company's stock. While this is a striking departure from the usual British policy, the motive was a political one.³⁸

Although pools and trusts are common in England the government has not made any general public investigation of them. The Board of Trade, of course, is more or less cognizant of their doings. When a pool was organized among certain Scotch steel makers in 1904, the government was asked in Parliament whether it would take any action thereon, to which the reply was made that the situation did not seem to require intervention.³⁹ In 1908 Sir Gilbert

³⁷ Board of Trade. Memorandum upon the work of the various departments showing legislation and the developments consequent on the new enactments, 1906-1909. London, 1910.

³⁸ Macrosty: *The Trust Movement in British Industry*, London, 1907, p. 306.

³⁹ *Kartell-Rundschau*, Mar. 30, 1904, p. 345.

Parker interpellated the Prime Minister on this subject in the following terms:

I beg to ask the Prime Minister whether he is aware of the existence in Great Britain of trusts, rings, cartels and other combinations having for their object the monopolisation of trades and markets, by regulating the output or by keeping up prices and stifling competition; and, seeing that such combinations are in restraint of trade, and are, therefore, inconsistent with the present free trade policy of the country, whether he will take steps to restrain the increasing monopolistic operations of foreign trusts in the United Kingdom; and whether the Government will grant a Royal Commission or a Select Committee to inquire into the existence of railway conferences, shipping rings, coal rings, industrial combinations of the iron and steel trades, such as the Railmakers Syndicate and other organizations like the Imperial Tobacco Trust, the Meat Trust, and the German Electrical Manufacturers Trust.

To this inquiry the Prime Minister, Mr. Asquith, replied as follows:

I am aware of the existence of trade combinations of the kind referred to in the United Kingdom, and I agree that in some cases the effects of these may be prejudicial to the public interest. But the operations of such trusts are necessarily more circumscribed and less mischievous here than in other countries in which they are fostered by a general customs tariff, and I doubt whether there would at the present time be any advantage in such an inquiry as the hon. member suggests.⁴⁰

Already (Nov. 30, 1906) a Royal Commission had been established to investigate the shipping rings, and this commission made an elaborate report thereon in 1909. These shipping rings which are often international in character, have long controlled the rates of freight and maintained their hold over shippers by a system of rebates to those shippers who patronized them exclusively. The general tenor of the Royal Commission's report was that measures should be taken to promote the settlement of disputes by private conferences, conciliation and arbitration between the steamship lines and the shippers, and that the Board of Trade should lend its aid thereto. No further action by the Board of Trade was recommended, unless national interests were affected, when it might inquire into the matter and report to Parliament. To further these ends the commission recommended, among other things, that the Board of Trade be authorized to obtain confidential information on pertinent matters.⁴¹

⁴⁰ *Parliamentary Debates, House of Commons*, April 29, 1908.

⁴¹ *Report of the Royal Commission on Shipping Rings*, Vol. I, 1909, pp. 87-89.

More recently, 1909, the government made an investigation as to "how far and in what manner the general supply, distribution and price of meat in the United Kingdom are controlled or affected by any combinations of firms or companies."⁴² The principal findings of this committee were expressed as follows:

In conclusion, we are of opinion that the combination which exists to the extent we have described between four of the United States companies engaged in the beef trade in the United Kingdom is not at present sufficiently powerful to be a serious danger to the beef trade as a whole.⁴³

While the best known writers on the subject of industrial combinations in England, as for example, Mr. Hirst, Mr. Macrosty and Prof. Levy have described in detail numerous and sometimes highly monopolistic combinations in English industry, they agree with the Prime Minister that England's free trade policy furnishes an important safeguard, although they do not recognize it as a complete one. The low transportation rates in a small island like Great Britain, together with its proximity to other large industrial countries, is another factor to be considered in judging this laissez-faire policy. Both of these factors, however, may be neutralized by international combinations of which the rail syndicate and the shipping rings already mentioned are only two examples of a class that is already numerous.

Canada

In contrast with England, the policy of Canada towards industrial combinations has been distinctly repressive. By a criminal statute enacted in 1889 it is declared an indictable offense for persons to combine to unduly limit the facilities of production, to restrain or injure trade or commerce, to unreasonably enhance prices, or to unduly prevent or lessen competition.⁴⁴ The terms of the law are much more elaborate and specific in form, but it is not necessary to quote them verbatim. Section 498 provides expressly that these prohibitions do not apply to combinations of workmen for their reasonable protection as such. In this connection it may be noted that a like exemption has been inferred by the courts with

⁴² Board of Trade. *Report of the Departmental Committee Appointed to Inquire into Combinations in the Meat Trade*. London, 1909.

⁴³ *Ibid.*, p. 15.

⁴⁴ *The Criminal Code*, Revised Statutes, 1906, sections 496 to 498, inclusive.

respect to combinations of employers to oppose combinations of workmen.⁴⁵

This law was passed, apparently, as a result of an investigation into combinations in Canada which immediately preceded it, and which revealed the existence of a large number of agreements among dealers intended to restrict competition.⁴⁶

It appears that twelve cases have been tried under this law, including both criminal and civil actions. In seven criminal cases tried conviction was secured in five, while in five civil suits this law was twice successfully pleaded in bar of judgment. In none of these cases did the question of a consolidation of competitors appear. This criminal statute, it should be noted, applies to undue restriction of production, unreasonable enhancement of prices, etc.

Another means of curbing combinations is found in the act to amend the Inland Revenue Act (August 10, 1904). This provides substantially that in the case of licensed trades the Minister of Inland Revenue may revoke a license, (1) where the licensee makes contracts of sale or commission with the condition that competing articles shall not be handled by the vendee or agent, or, (2) where the terms of such contracts are such that the profit of the vendee or agent would be greater, if he did not handle such competing articles. The licensed trades covered by this law are principally manufacturers of malt and spirituous liquors and of tobacco. The act was aimed principally at the American Tobacco Company. —

Another law aimed at monopolistic combinations is found in the Patent Act (Revised Statutes, 1906, Chapter 69, Sections 42 and 44), which provides substantially that, if a patentee does not meet the reasonable requirements of the public in regard to the patented article, compulsory licenses may be given for its manufacture. It is understood that no application has yet been made of this provision of the law.

Still another means of bringing an obnoxious combination to terms was found in the Customs Tariff of 1907, which provided substantially that if, as a result of a judgment in a Canadian court, it appeared to the Governor in Council that a combination existed in Canada with respect to the manufacture of an article, and that this combination was facilitated by the existence of a tariff duty,

⁴⁵ *Lefebvre v. Knott*, 13 Canadian Criminal Cases, 223 (1907).

⁴⁶ *Report of the Select Committee to Investigate Alleged Combinations in Manufactures, Trade and Insurance in Canada*, Ottawa, 1888.

then the Governor in Council might admit such article free of duty or reduce the duty, so as to give the public the benefit of reasonable competition. The only instance of the application of this law seems to have been in February, 1902, when the duties on certain kinds of paper were reduced from 25 per cent to 15 per cent ad valorem. This was the result of a complaint by the Canadian Press Association in May, 1900, against a combination of paper manufacturers. This provision of the customs law was repealed by the Combines Investigation Act, 1910, which substituted, however, an almost identical rule.

Finally, may be noted a very ingenious law known as the Combines Investigation Act, 1910, which incorporates several elements of the laws already described and adds a novel plan of investigation and publicity. The law defines a "combine" in detail, the broad elements being the existence of agreements for fixing prices, restricting competition, or controlling production, to the detriment of producers or consumers, and is made to include, also, a trust, monopoly or merger.

Briefly stated the system of investigation provided is as follows: If six or more British subjects of full age and residents of Canada believe that a combine exists which has enhanced prices or restricted competition to the detriment of consumers or producers, they may make a written application to a judge for an order directing an investigation, specifying the particulars of the case. Upon such application being made the judge shall give a hearing, and, if the complaint appears to have reasonable foundation, the judge shall order investigation by a board. Such board shall consist of three persons, one of whom shall be appointed on the recommendation of the complainants, the second on the recommendation of the parties complained of, while the third shall be a judge recommended by the first two. This board shall proceed to investigate the complaint with powers to summon witnesses and to require the production of books and papers. The report of the findings of this board, made after diligent investigation, shall be published in *The Canada Gazette*.

✓ As a result of such investigation and report, in addition to the important remedy of publicity thus effected, certain positive measures for correcting abuses may be taken, namely, reduction of customs duties, revocation of patent and criminal prosecution. The

provisions for the reduction of customs duties are substantially the same as those described above in connection with the Customs Tariff, 1907, and need not be repeated here. A patent shall be liable to revocation, if the patentee makes use of his exclusive privilege to unduly limit facilities for producing, manufacturing, transporting or dealing in any article of commerce, or to restrain trade or commerce, etc. If the board reports that a patent has been so used, an action for revocation may be initiated by certain officers in the court having jurisdiction of this subject, and the patent may be revoked by the court, if the evidence requires it. The prohibitions of the criminal code under section 498, already indicated above, are practically reiterated in this act. A person found guilty of offending these prohibitions is declared "liable to a penalty not exceeding one thousand dollars and costs for each day after the expiration of ten days, or such further extension of time as in the opinion of the Board may be necessary, from the date of publication of the report of the board in *The Canada Gazette* during which such person continues to offend."

Mr. R. L. Borden, now prime minister, observed during the debates on this law that it is not quite clear what the exact relations are between this part of this act and the criminal code which it practically re-enacts.⁴⁷ It may be noted that the penalties are different, and in this case do not include any penalties of imprisonment, though there is a possibility of much higher fines.

The author of this very interesting measure was Mr. King, at that time Minister of Labour. In submitting it to the Canadian Parliament he insisted on the feature of publicity as being of the first importance, and said further: "In introducing this legislation no attempt is being made to legislate against combines, mergers and trusts as such, the whole intention is to place some restraint on these large aggregations of capital so that the advantages which may come from large combinations of wealth may in some measure be secured to the public who have helped to make possible these large combinations."⁴⁸

The only proceedings had under this act are in the case of *Drouin et al. v. United Shoe Machinery Co. of Canada*, which were begun November 10, 1910. The Shoe Machinery Co. resisted the

⁴⁷ Canada. *House of Commons Debates*, Tuesday, April 26, 1910, p. 8173 (unrevised edition).

⁴⁸ Canada. *House of Commons Debates*, Tuesday, April 12, 1910, p. 6959 (unrevised edition).

proceedings at every stage, even carrying an unsuccessful appeal in the initial stages of the investigation to the judicial committee of the Privy Council. The report of the Board has not yet been published.

Even this brief survey of Canadian legislation makes it evident that Canada is acting betimes with the firm purpose of restraining combinations from injurious exploitation of the public. In this she is simply repeating what she has done in the management of her railroads, which though of great extent and financial power, are under a comprehensive and efficient system of regulation and administrative control.

United States

The subject of the policy of the United States in regard to combinations is such a large one, and is being discussed so fully on this occasion, that it would be out of place to attempt to consider it here, except by the briefest general reference. So far as the general conditions tending to promote industrial combinations are concerned, it may be said that almost everything, apart from the criminal statutes against them, has tended to promote their development. Even our criminal statutes have had an important influence in determining their character—that is, in promoting the formation of large consolidations as distinguished from temporary combinations among independent concerns. This was particularly the case before it was realized that the law could be applied as effectively to such mergers as to agreements between competing concerns.

The federal and state governments have slowly but finally tightened the bands of the law, and compelled obedience thereto. In the case of railroad corporations public control in general has been more successful, which may be attributed in part to the fact that there were not the same uncertainties as to the meaning of the law, and in part to the establishment of administrative organs of regulation and control. Federal administrative control of industrial combinations has not yet been extended beyond the field of publicity. Certain states have made important progress in the establishment of commissions for regulating public-service corporations, insurance, etc. The United States still lacks a general system of corporation law, while the state corporation laws have been extremely lax and in particular have placed little restraint on the formation of holding companies. In another and very important direction there has

been, however, a great advance in recent years, namely, in formulating and applying policies which shall reserve to the public in a greater degree the control and use of natural resources. Within the present week the President has recommended to Congress that potash and nitrate lands be excluded from the general right of entry.

Conclusion

If a broader survey were made of the policies of various countries towards industrial combinations it would be found, judging simply from their legal status, that Belgium and Italy belong substantially in the same category with Germany, that Austria and Hungary are in the same category with England, and that France, Russia, Australia, New Zealand and Cape Colony are in the same category with Canada and the United States.⁴⁹ The legal status of industrial combinations, as already stated, does not, however, fully reveal the policy of a country thereto, and the limits of this paper do not permit a particular discussion of the various other circumstances in respect to such policy.

In conclusion it may be fairly said that, in spite of wide differences in the conditions of the several countries as well as in their laws, there is observable a distinct tendency towards a greater degree of restriction and control of industrial combinations. The means which have been adopted for this purpose vary as widely as the laws themselves. In Germany, for example, the tendency is towards an expansion of state industry and participation by the government in the business and direction of industrial combinations. In Canada, on the other hand, publicity and restrictive legislation are almost wholly relied on. The United States is pursuing practically the same policy as Canada, with possibly greater tendencies towards the public control of natural resources. In England alone has a comparatively laissez-faire policy been adhered to in this respect, although frequent government intervention in labor difficulties makes evident that it is a question of practice rather than of principle.⁵⁰

⁴⁹ Cf. Walker: *Laws Concerning Monopolistic Combinations in Continental Europe*. *Political Science Quarterly*, Mar., 1905; *Denkschrift über das Kartellwesen*, IV Teil, Berlin, 1908; *Trusts in Foreign Countries, Laws and References Concerning Industrial Combinations in Australia, Canada, New Zealand and Continental Europe*, Government Printing Office, Washington, 1911.

⁵⁰ At the time this paper was read (March 30, 1912) the British government was attempting to bring about the settlement of a great coal strike by fixing minimum wages of miners by Act of Parliament.

DISCUSSION

MR. M. M. DAWSON: The meeting will now be thrown open for discussion, and before entering upon that I am requested to propose a question which has been handed up to be read. It is addressed to Mr. King, by Mr. Charles C. Bulkley, of Philadelphia. "By whom is the expense of the inquiry in Canada to be borne? Will it be practicable to compel such heavy cost to be borne by such combines as unsuccessfully contest?"

MR. W. L. MACKENZIE KING: I apologize, ladies and gentlemen, for having omitted to speak of expenses in my remarks. The whole cost of these investigations is borne by the government. It is, as I explained before, an inquiry. The parties are put to the preliminary expense of drawing their own declarations, and appearing before a judge and making out a *prima facie* case, but even as to this the judge has discretion to order the government to refund any expense, parties may have been put to in the preliminary stage. Should it appear that some parties have preferred a complaint for a purely personal motive or for spite the judge would probably not recommend payment in such a case. But once a board is ordered, the government bears all the necessary expenses of the inquiry. Members of the board do not receive a very large consideration, they are allowed twenty dollars a day and expenses; that is to say, traveling and living expenses, during the course of the inquiry. Witnesses are paid just as in a court of justice, according to the scale prevailing in the courts of the province in which the investigation is proceeding. In the matter of counsel, the government may, if the minister desires, employ counsel to assist the board. He is not in the position of a prosecuting attorney, but in the position of an expert investigator, to help the board, to assist the two parties, rather than one party as against the other. Should parties feel that they wish to have their own counsel present as well, they have to obtain the consent of the board. I hope you would not mind my saying that a large section of the public has a horror of technicalities, and the business of a lawyer

in some cases would seem to be to thwart rather than facilitate full inquiry, to prevent certain things from being discovered. The act has contemplated this possibility and it is therefore provided while a board may allow solicitors to be retained by combines or trusts and to appear and assist them, it may dispense with their services at any stage if these services appear to be impeding the real object which is to get at all the information the board is seeking. If the parties have their own counsel they must bear their expenses, unless the board orders differently.

The suggestion is made that the combine might, in the event of its turning out to have operated against the public interest, be obliged to pay the costs. Personally I do not think that it is wise that a requirement of that kind should be made, and for this reason: The important thing to keep before the public is that these are not criminal prosecutions, but investigations, and investigations the cost of which in the public interest the state ought to be prepared to bear. If the investigation reveals that a combine is carrying on a course of conduct detrimental to the public interest, there is an opportunity for punishment through the criminal sections of the act. That reminds me that I omitted to state that the criminal code contained a provision which makes persons criminally liable, who unduly enhance prices, or unduly restrain trade, etc. That is simply the English common law re-enacted in the form of a statute. It has been found wise to retain this section, but as I think your experience has been here in part, it has been found that this business of proceeding against corporations through a public prosecutor and leaving it to the attorney-general to single out particular concerns, is invidious from many points of view and does not result, in many cases, in successful prosecutions. If it appears, from the facts that the investigation discloses, that there has clearly been wrongful conduct on the part of any concern, it may still be proceeded against under the criminal section of the act, with this additional circumstance. The board has all the evidence that the board has brought to light in its inquiry. The mere fact that you have machinery ever ready for getting at the facts, and give them publicity, will, we believe, without the law being put into operation, at all, have the effect of restraining corporations from acts which would render them liable under the criminal code.

MR. R. L. KIMBROUGH: Just as we had, in Washington, the man through whom the American colonists took the first step in our national evolution of securing our national independence, and the succeeding years were consumed in its successful organization and establishment; and just as we had in Lincoln, the man through whom we took our second step and extended that independence to every American citizen, and the succeeding years were consumed in the reconstruction; so to-day the American people are demanding commercial independence for every American citizen, and we are looking for a leader through whom the work can best be accomplished.

In my travels and studies for the last ten years over thirty-eight states and Canada, I have condensed what the American people are demanding into three fundamental statements.

What are they?

1. The universal establishment of the principles and teachings of the kingdom of God as the recognized basis of all business and of all government.

2. The permanent employment of all men on the basis of a good annual income and under good sanitary conditions.

3. The organization and the reorganization of all business enterprises on these two principles with a profit-sharing basis, guaranteed under simple state and federal regulations.

There is a universal industrial, economic, political, social and religious unrest.

By putting all business and government operations on the first principle—righteousness, the square deal, the golden rule basis—then you remove the cause of all unrest—selfishness. You make it easy to continue to develop into our national best.

Giving all men a good annual income increases their purchasing power. An increased national purchasing power means increased demands which will automatically keep all manufacturing industries running under proper regulation at full capacity. With those two elements of our national industries running at full time and permanently employed, all merchants will have profitable business under proper regulation.

Those three will afford permanent work for all clerical, professional, and clearing house men at increased salaries and incomes. In turn these four classes will keep the farmers busy raising enough food at good prices to feed all the other classes.

Then we have the national health, wealth and happiness of all men, all because the corporations are required to give an annual income to all their employees on the most liberal basis which the business will justify.

Since business in the last twenty-five years has passed from the individual ownership to the incorporated form of ownership, then we must modify the charter requirements so as to require the following:

1. All corporations to issue only one class of stock to be full paid at the actual value of the property plus the necessary working capital, to be paid into the treasury and go into the business and not into private pockets, to be sold at par, or above par; and from one-third to one-half, or more, of the stock issue to be held for and sold to the employees as they save their ten or hundred dollars, and all future improvement or extension issues to be sold to the employees, giving them the first refusal, and any balance to be offered to the public.

2. That all corporation charters require that annual contracts be made with all employees with a guaranteed annual income.

3. That public statements showing proper organization and all transactions according to these three principles be made at stated times to all employees, to all stockholders, to the state, and to the federal government; and imprisonment for any false statements discovered in said publicity reports.

National laws enacted upon these three principles, and letting all details work themselves out according to these fundamental bases, will give an immediate and permanent solution to all our local, state and national problems.

In the absence of any immediate national legislation, the corporations themselves can solve the problems by voluntarily going upon the basis of these principles and so publishing the fact to the American people.

There would be such a flood of capital and of orders pouring in upon the corporation that will take the initiative, that all others would follow in self-defense.

The American people are ready to furnish the capital and the orders to put this system into immediate operation.

The main cause of all this unrest is the selfish and inequitable distribution of the profits resulting from improper combinations of

industries—giving a few men undue advantages and corrupting profits.

The American people desire that efficient, proper, and profitable combinations continue in all lines of industries, but they do demand some of the profits of all such proper big combinations, so that our nation can continue to command its share of the world trade resulting from the world rising standards of living among all peoples.

MR. A. H. MULLIKEN, CHICAGO: Individual facts sometimes forcibly illustrate the general tendency. The cement industry of Kansas, a few years ago, was exceedingly prosperous, so much so that it attracted capital and a large number of plants were erected. Free and unrestrained competition between these plants brought each industry to ruin or practically so. The price of cement in two years in that market fell from \$1.10 a barrel to forty cents a barrel. Within a short time the Central Cement Company of West Virginia was organized, and bought the assets of sixteen of these Kansas cement companies. The president of one of these companies was asked how he dared to go into a combination of this kind, in violation of the Sherman law. His reply was, "Dare? We have to do it or bust!" The attorney of the combination was also asked the same question. "It is simply a question for these plant owners between uncertainty and certainty, the uncertainty being an interpretation of the Sherman law, which no one has definitely determined, and the certainty of ruin, owing to free competition, unless we people get together."

MR. OBERLIN SMITH, PRESIDENT, FERRACUTE MACHINE Co., BRIDGETON, N. J.: The tendency of this Academy, and many other sociological societies, as well as various progressive business organizations, is toward altruism—the helping of all by all. We are working in this direction; but it will come slowly, and we cannot expect its full development very soon.

But there is another point of view; we are learning to work in a new way with an old tool, efficiency. This appeals to even the so-called greedy corporations who will not be appealed to by mere altruism. The road toward more universal happiness, by adding so greatly to the wealth of the nations, that we can all have a comfortable share, lies in the avoidance of waste, the tremendous waste

that we now practice. In the direction of production we are making vast strides. In the operation of many of our industries, the work of Mr. Taylor and his disciples has already added greatly to the wealth of the world, and this within a very few years past. Not only has the invention of high-speed steel more than doubled the speed of cutting metals, but the systems of organization which these men have instituted have in many cases doubled the amount of work which an operative can perform in a given time, and this with less effort and with higher wages than before.

To supplement these factory methods which have proved so successful the next important reform movement which has begun, and which we must carry on to the end, is the proper care and protection of the human element, as well as the material. We must keep our men in good repair, as well as our machines, and to this end we must promote compensation for injuries without litigation or other dispute and, eventually, we must get compensation also for sickness and unemployment. These reforms already have gone far in European countries, most recently, as we all know, in conservative England. Very much yet needs to be done in this country, in the way perhaps of some form of state insurance. Continuation of the present system is absolutely out of the question and we should feel deep national shame at the figures lately made public in this and other societies showing that, during one recent year, the employers in this country paid out about \$100,000,000 for compensation to workmen who only got about \$25,000,000 of it. The remainder must have gone chiefly to lawyers and insurance people. Thus our administration of this work has cost us about seventy-five per cent for expenses, against about twelve per cent in Germany. When a reform of these evils has been accomplished, together with the improvement of our factories in the way of safety and sanitation, we shall have so increased the health and happiness of our industrial operatives not only physically but also psychologically, owing to their feeling of security against sudden and dire disasters that even the corporations will regard the additional expense as money well invested, from a merely financial point of view. Some of the biggest of them are already instituting "welfare work."

Although efficient production is thus rapidly being established we find that in distribution we are far behind, and that the absolute waste of wealth is something enormous to contemplate. Tremendous

reforms in simplifying litigation, in selling our goods, in the way of avoiding numerous middlemen, duplicate transportation, a vast mass of useless advertising, etc., is too great a subject to speak about here and now. Probably this will be one of the most important subjects for all of our economists to consider in the near future. It may prove a bigger factor than we now think in reducing the "cost of living."

It may not be known to all my hearers that only last week in New York a number of us spent a couple of days in organizing a brand new anti-waste society with over eight hundred charter members, many of them eminent men in various walks of life, and well scattered throughout the country. There are, to begin with, fifteen directors; and the first president is Mr. James G. Cannon, of the Fourth National Bank, New York. We cannot yet tell what the work of this society will amount to, but its intentions are good and it may be the means of favorably influencing many great questions. During the discussions it was surprising to hear how many phases of non-wastefulness such a society might tackle, not only in the engineering of production work, but in questions of law, politics, and perhaps even religion. At the first banquet of the society we had present the mayor of New York and many were delighted to find a man in his position, himself a lawyer and a former judge, so earnest in a desire to reform the action of the courts in the interests of simplicity and celerity, together with non-meddlesomeness in legislation.

In adopting the very concise and definite constitution and by-laws of the new society all unnecessary words were stricken out, even the article "the" at the beginning was dropped so that its title is simply "Efficiency Society." May its future work be as good as its beginning!

For all of us to attain the truest efficiency, we shall doubtless later on be obliged to arrange for government ownership, or control, of many public utilities, as has been done in other countries. This no doubt will always evoke a howl against the bogey, "Paternalism." Perhaps that is a terror, but shall we not, as the spirit of peace and good will increases among us, backed by common sense, adopt as our mascot that good fairy, rather than bogey, whose name is "Fraternalism?"

MR. JOHN H. BARTLETT, DELEGATE BY APPOINTMENT OF GOVERNOR OF NEW HAMPSHIRE: Since I have prepared no paper, your rules granting "leave to print" do not apply to me in the least, but coming here as a representative of the State of New Hampshire, and being so cordially invited, I am impelled to say a word which is uppermost in my mind, and I will address what I say to you more as jurors to persuade you on certain questions of fact rather than help instruct you on any questions of law or theory. You have already been instructed by the very highest authority in the land as to what the law or economic theories are or ought to be.

I want to say this. There is not at this moment, neither has there been during this great convention, a single poor person in this hall—poor in the sense in which we treat the subject of poverty in the great social and economic scheme of society. I want you to think of that a moment until you thoroughly realize it, that in all our deliberations there has not been present one of those poor persons about whom we have been talking; and yet, in all these papers and in all our discussions, we have been talking about what is good and proper and beneficial for "us," as if we were representative of the whole. Probably one-half of all the population of this country is poor financially, in the sense in which I mean it, and yet not one of them has been here to-day. I want you to consider why it is that none of them has been here. I will tell you. It is because that poor man is over in yonder mill toiling without cessation from morning until night every day in the week, and, as we have already been informed to-day, at an average wage of seventeen cents an hour. That fellow who works for seventeen cents an hour I have not had off my mind for a moment all day. I did not know that he worked as cheap as that. We sometimes are late in getting the news up in New Hampshire. Now, if he, desiring to come here, should take even one hour off his job, he has to figure so closely on his wages on Saturday night that he would be unable to buy a pair of socks for his little boy or girl, or some other absolute necessity, at the end of the week.

We have been holding these conventions and other conventions and great assemblages and political meetings all over this country for years and years and years, telling what we are going to do or ought to do for the poor man or the laboring man. I want to sound this note of warning. If we, the more fortunate class of the community, do not stop talking about what we are going to do with them or for

them and actually do something for them, they will wake up to a realization of their power and will declare in too violent a manner what they propose to do with us or to us. I do not say this as a labor leader, like Mr. Gompers who has addressed you, neither as a laborer, nor as one claiming to be especially allied with labor, although I cannot help harking back only a few years to when I, with eight brothers and sisters, in a humble home in New Hampshire, thought I was extremely poor, and my sympathies now never cease to burn for those who feel the sting of poverty. And such accumulations as I have been fortunate enough to make undoubtedly came, directly or indirectly, from the brow of the laboring man who did not receive his share of the profits of industry. But I wish to reiterate, that we must get ourselves into a mental attitude where we can realize the hardships of the really poor and be willing to shape the commercial and productive machinery of this country in such a way that the really poor man can obtain from his hard labor enough to support himself and his little family decently, and unless the more favored portion of the community and the wealthy people of the land realize the rights and demands of the poor and voluntarily, themselves, take the leadership in giving them their rights, there will arise a crop of irrational and unreasoning leaders who will arouse and stir the passions of the poor to acts which may be disastrous.

The only weapon which the laboring man has, when he is denied the right to strike, is the ballot. The great trusts have so shaped their scheme of employment and pensions and bounties that organized union labor, in its ability to strike and enforce its demands, is almost a nullity. The tendency of the trusts to monopolize labor in any given direction is growing larger and larger, and when you see one concern employing two hundred thousand laborers, more than there are in the states of New Hampshire and Vermont together, it is very easy to look forward to a rapidly approaching day when each kind of industry will be dominated or practically controlled by one gigantic concern, or allied interests, so that the laborer who is discharged from that concern has no other place to seek employment. If, then, the weapon to strike is practically denied him, he will resort to the ballot and under reckless and unscrupulous leadership will adopt desperate remedies along the lines of socialism and anarchy which might, and would be, averted if men of sober judgment could

look ahead and take the leadership along rational lines into their own hands.

It is easy to see how capital can unite. The great men who control capital, and all the leading lines of industry in this country, can readily communicate with each other in a short time. They can agree upon prices without detection. They can fix the prices of the articles the poor man must consume, either under the guise of law or a gentleman's agreement, and so far as I can see, the consumers will be obliged to pay. They can put prices up or down at their pleasure. The poor man, unorganized, is practically at the mercy of organized capital in the prices which he shall pay for the necessities of life, and which he shall receive for his labor. My point is, that capital can organize and labor cannot. That is, labor cannot organize in the perfect way in which capital can. Consumers would starve or freeze if they undertook to boycott capital. But the ballot, when the laborer discovers that he has it, can be used in such a way that capital and all industries will suffer. By the ballot he can control prices and do other socialistic and anarchistic things which we are rapidly compelling him to do. My note of warning, in brief, is simply this. We must give to the poor man a fair show in the struggle for existence, or we are inviting upon us a calamity which words cannot describe. Now it is high time that the manufacturers, that the capitalists of this country get right down together and take the laborer by the hand and reason it out with him, and do it fairly and justly, before he gets too angry about it.

I do not mean to criticize in the least the addresses to which we have listened to-day. The courtesy and consideration with which speakers of diametrically opposite positions treated each other was most commendable. The advanced position taken by such distinguished men as Professors Wyman and Meade is a significant omen. They took the position flatly that unless we can restore to the market place competition and insure reasonable prices to the consumer, the government must control prices. The position which these gentlemen took is far in advance of the position which politicians dare to take, and yet it is an inevitable conclusion. And when men, in such a dispassionate way, lay down these principles, it will crystalize public thought into channels of activity which will result in good, because their sober, serious judgment cannot be criticized, as the appeal of the demagogue on the stump, but will assist in molding

public sentiment, regardless of party, and will bring the two extremes of society into closer and more humane relations.

W. A. DOUGLASS, B.A., TORONTO, ONT.: At the back of all this contention about competition, combines and trusts are there not some serious maladjustments, to which we should give our first attention? Should we not first try to remove these, and then, if we still find that there are any unjust combinations, are we not in a much better position to apply the appropriate remedies?

To make this clear permit me to call attention to the development of this continent, a development without a parallel in the history of humanity. A hundred and twenty years ago in this republic, there were about four million people; at the present time the number is a hundred million. While the general population has doubled every twenty-five years, the civic population has doubled every ten years.

It was inevitable that this development must have a two-fold result. On the one hand, millions of people devoted their utmost energy and their utmost skill to clear the forest, construct the cities, and fabricate the various appliances needed by the people. They put forth every effort to make these things as abundant and cheap as possible. On the other hand, as the population concentrated more and more in the large cities, the land became more and more scarce and more and more dear. Here we have the two opposite movements, opposite just as a debit is opposite to a credit. The value of the crops and the buildings is due to individual energy producing, while the value of the land is due to the population crowding.

Suppose I had inherited one of those acres situated on the center of this city or New York or Chicago, what would be my relationship to my fellow men? Would I be inventing all sorts of machinery to make goods abundant and cheap? Verily, nay. As the people crowded more, I could say to the producers, Pay me more, pay me more. To me it would be increasing fortune, and to the toilers who produced the abundance, it would be increasing obligation, till I could collect in a single year as much as the average workman would obtain in a thousand years. While that workman is taxed at every turn by systems that walk in darkness and which compel him to surrender many days' toil in the year, I would never be called on to surrender a single hour. I would enjoy all the benefits of civilization

without any of its burdens, while the man who is struggling to pay off the mortgage on his farm must help to support the burden of government and to support me besides. This goes a long way to explain why it is that, while some men own millions of dollars, there are others who do not own a single dollar. The commissioners of charity in New York City reported last year that every eighth person in that city was in receipt of charity.

If a man is despoiled, it matters not whether the spoliation is done by an individual or by a combine. Should we not attend to this rectification of the taxation question first, and then attend to the combines after, if they require it?

MR. D. M. JOHNSON, CHESTER, PA.: I was thinking of the proposition of the single taxer. I am not a single taxer, nor a socialist; but if I were a single taxer, it seems to me I would go the whole length. I would say, that no man should own any property; that property belongs to God Almighty and man has the right to only use it. As to the recall proposition, which seems to have been withdrawn as to Ohio, I am glad of it. I am glad for the sake of the men who may be elected mayors of the cities of Ohio that there is to be no recall. I happened to be mayor of a city in the State of Pennsylvania, when we had a strike, and a gentleman of the Board of Trade said that if there had been a recall during the trolley strike we would have had a new mayor every week. It might have been a good thing. The golden rule has been mentioned. Of course if we lived by the golden rule and everybody understood in concrete form what the golden rule is, as applied to our own business and that of every other business man, then we would not need any of these conventions nor would we have any need of congress or legislatures. Mr. President, we act in the concrete and not in the abstract. Until we can apply the golden rule, until we are so far advanced that we as individuals can practically apply the principles of the golden rule to our actions, we have to embody as much of it in our statutes and in our laws as we can endeavor to carry out. But whether we have it in statute form or not, we all ought to try and lead on to that end. I have paid some attention to the question of strikes. What is a strike? Theoretically it is the inalienable right of a man to quit work; practically it is assaults, batteries, dynamiting, murder, killing; and I know what it is practically.

I condemn no man when I stand on this floor to-day. I am not picking out any man or set of men or any class of men, but I say that it becomes the people to look into these things, to see whether there is not some remedy. I know it produces these horrible results. I am not saying who do these things, and I do not propose even by innuendo to condemn any man by what I say here to-day; but I say that the crime of having our civilization or lack of civilization go on in this way cries for a remedy. I would like to have some man prepare a paper who is capable of offering some practical solution of this thing, and read it to this or some other convention. Somewhere I want to see some solution by which this thing may be ended and done away with.

MISS FAYE MARIE HARTLEY, LINCOLN, NEB.: As far as I know, I am the only representative here from Nebraska, and more than that, I am the only delegate from any organized group of country people. I represent the Rural Life Commission of Nebraska, which was created by the Nebraska Farmers' Congress, and I shall try to speak simply as a mouthpiece of that congress. The men at the head of this movement are in Nebraska, too busy working out the salvation of the state to come east to a meeting, and I have come in their stead.

The fact that out of forty speakers scheduled to speak at this session there is not one who represents in any way the agricultural interests of this country; and the fact that there is only one speaker out of the forty to represent the labor unions, which are the only channel through which the laboring men as a class ever have spoken, make it very clear, it seems to me, that this meeting, like many similar ones which meet over the country during the year, is founded on a wrong principle. Let us remember Abraham Lincoln, who said that this should continue to be a government for the people and by the people.

I feel that men like Mr. Fitch, of *The Survey*, and Mr. Garfield, of Cleveland, who are earnestly and conscientiously striving to uplift the people, are acting on as fundamentally wrong a basis as the many men we have been hearing who sincerely feel that for the last twenty years or so they alone have been the Moseses on whom the country depended for salvation. Only the people are going to work out the salvation of the people. When a man goes

through a university, perhaps takes a law course, and moves henceforth among professional people and with professional ideas, he gets an experience which the plain man does not, but he also misses the experience the plain man has; and I believe the everyday man is as capable of deciding for himself what he needs as is the professional expert, and perhaps a little more capable. The only thing to do is to join hands, exchange experiences, and work together. Let us go to the people and say, "It's up to you—this is your job," and stop talking about uplifting them.

We let Omaha run things for us in Nebraska for a good many years, and when we became restive we let them lull us to sleep again with the same well-meant benevolent promises that everything was going beautifully. Now we have realized that "if you want a thing done, do it yourself," and the Nebraska Farmers' Congress is the result, run by farmers, and meeting with farmers all over the state. It is doing things. All this talk of anarchy and violent socialism that has been frightening some of you, is simply the incoherent mutterings of that great sleepy giant, the people, who is having a bad nightmare, but who will presently wake up, be provoked at his own sleepiness, and take sensible, practical measures to set things right, without overturning everything. Columbia is a good-natured giant as well as a sensible one, and while she may administer punishment to some of her children who have become too big-headed and felt that everything depended on them, you need not fear any such awful catastrophe as a number of speakers have prophesied.

The Nebraska Farmers' Congress believes in full publicity, and in combination which is democratic and fair.

PART FIVE

*The Effect of the Sherman Anti-Trust
Law on the Business of the Country*

THE SHERMAN ANTI-TRUST LAW AND THE BUSINESS OF THE COUNTRY

BY JOSEPH T. TALBERT,
Vice President, National City Bank of New York.

We are witnessing in the Twentieth Century more universal, insistent and determined demands on the part of the masses everywhere for extension of civil and political rights, than at any time in history. There seems to be a world-wide movement of general dissatisfaction and of social unrest, finding expression in many ways. In some countries the struggle is for freedom and political rights; in others, where liberty and freedom already are enjoyed, the tendency is towards socialism, or towards the destruction of special privilege and the distribution of opportunity, if not of property. It is futile to blind ourselves to these facts, and vain to oppose the forces which underlie them. In order that we may understand the full meaning of these movements, it may be well to go back to their origin and trace their course down to an application to the problems confronting us. Possibly in the light of history thus revealed we may see more clearly the ultimate destination, and be able thereby so to direct the movement as to secure the greatest good to all, with the least possible injustice to any.

The significance of this world-wide unrest may be summed up in a phrase. It is an awakening of the people; a realization of their power and supremacy. That the movement in this country to regulate and control capital eventually will result in good to the masses cannot be doubted. The history of all similar movements in the past proves it. It would seem, therefore, to be the duty of all who influence public opinion, and have power to lead and mould it, to seek not so much to check the movement as to direct its course in such manner that the blindly instinctive impulses of human nature may not destroy the economical organizations of capital, which are useful in commerce and absolutely essential to the national welfare, but that the good in them may be preserved for the benefit of each individual in his struggle for subsistence. If the influential and thoughtful men, in public and private life, could seize and hold to this idea, laying

aside all hysteria and political buncombe on the one hand, and abandoning all opposition or defiance of popular authority and power on the other hand, and work in co-operation, substantial progress could and quickly would be made.

From the Reformation down to the middle of the Nineteenth Century the great factors which stimulated the spirit of inquiry in respect of the civil rights and privileges of mankind were (1) the Revival of Letters; (2) the Development of the Art of Printing; and (3) the Extension of Geographical Knowledge. Nearly every half-century of that period witnessed progress and development of social relations, increasing security in personal and property rights, and a higher general level of welfare. There were periods when the tides of progress rose in higher and higher floods, and then there would come the inevitable ebbs. Every forward impulse, however, marked substantial gains; humanity advanced and firmly set foot upon higher ground. Periods of stagnation, or of apparent retrogression, were but the intervals required for the people to grasp and incorporate for their permanent benefit new political ideas into the structure of society.

Let us analyze briefly the nature of these factors, which for three hundred years so powerfully influenced social and political conditions, and whose influence is ever increasing and becoming more and more powerful. We find at a glance that they constitute a triumvirate of the greatest forces in human progress. The Revival of Letters supplied the means of intelligence to the people; the Printing Press caused intelligence to become disseminated, gradually and very slowly at first, but surely and always in widening circles. Geographical Discoveries gave opportunity in new lands for the application of knowledge and the development of trade. The opportunity being seized, another long step forward was made. Through such successive steps political rights were increased, trade extended, wealth accumulated and society advanced. Thus we find that not in knowledge on the part of priests alone, nor in divine rights on the part of kings, but in the enlightenment of the whole mass of the people lie the mainsprings of progress and the torchlights of civilization.

During no similar period in the past have these forces been so active and influential as during the sixty years which include the last half of the Nineteenth and thus far into the Twentieth Century. At no time have the direct purposes of the people been more clearly

defined. Never have they moved with greater certainty of success. But the inventions and discoveries which have been made during the period mentioned have been so remarkable, and they have so wonderfully developed the complexity of our social, political and industrial relations, that new impetus, accelerated power, and vastly increased influence have been given to the forces which were continuously at work, until now they have become irresistible. The best that can be done is properly to direct them for the common good. These forces, acting under the stimuli of new inventions and discoveries, have created a series of new problems encompassing nearly every conceivable condition and aspect of human interest and activity. It will become the task, and it is the duty, of the student, the scholar, and of the practical and thoughtful man of business, to solve them. It must be done patiently and calmly, in the light of knowledge and experience, and in a spirit of unselfish patriotism, with an earnest desire for the commonweal. It is certain that much of the current discussion leads to no solution of the vital problems while it tends only to obscure the real questions at issue and to confound the whole subject.

Among the multitude of new problems, one group stands out conspicuously and demands immediate consideration and solution, because there are directly involved the trade and commerce of the country, which now languish, and upon the free and uninterrupted course of which national welfare and prosperity depend. The question, therefore, is vital. As to those various other groups, political and social, time in its process of testing, grinding and sifting, will be the great elaborator of truths and measures.

The general topic of this discussion, "Competition and Combination in Industry and Commerce," embraces the whole group of pressing problems to which I have referred. That portion of it dealt with in this paper permits but a glimpse of the other questions, but it bears so directly upon trade that it assumes a degree of importance out of all proportion to the mere question itself.

"Has the Enforcement of the Anti-Trust Act Been of Benefit to the Country?" In fairness, the answer should be partly affirmative and partly negative. If the determination of the question as a whole depends, however, upon the preponderance of good or of evil which has resulted from its enforcement thus far, or which may result hereafter, the matter becomes merely one of opinion, and the truth is

obscured in doubt. We may readily see much of apparent good that has been accomplished, or, rather, results that were thought to be good, some of which undoubtedly are good; but the extent of resulting evils likely to develop in the future, while not less certain, is not easily measured. We know that the day of arrogance and oppression on the part of organized capital in this country has passed forever. We know that corporate monopoly of the necessities of life has ceased, or will cease under the enforcement of this act. We know that the act is useful, in that it places in the hands of government the power to prevent oppression and injury to the rights of all to compete in trade. We know that these things are good, but we do not know to what harmful ends a strict enforcement of the act may lead. I believe that such enforcement is impracticable, if not actually impossible, and that it would be subversive of the best interests of the public, and destructive of our trade. The point which most concerns each individual, and consequently the state, is what effect the enforcement which is now actually asserted will have upon the prices of the necessities of life and upon wages. This is the real issue, and the question is open.

Under the complex conditions already described, the requirements of our ninety million people, whose wealth and numbers are increasing, have become enormous and will continue to grow. The production, manufacture and distribution of these requirements have made necessary combinations of large capital for purposes of efficiency and economy and for the legitimate gains to be derived from the employment of these factors in trade, rather than for the purpose of raising prices. Indeed, it cannot be shown that trusts which are not actual monopolies have increased the prices of their products on the whole in greater proportion than the costs of raw materials and of labor purchased by them have increased. As to the causes of these increases we shall inquire further.

In so far as our domestic trade is concerned, it is by no means certain that we can afford to sacrifice the economic benefits gained through the trusts, and to disregard the natural laws of competition and production which brought them into existence, in exchange for the apparent benefits derived. Time alone can determine this question. But it is perfectly certain that we cannot afford to do so in respect of our foreign commerce, for there we come in competition with goods manufactured in foreign countries where trusts and monopolies not

only are permitted but are fostered and encouraged, and where also there are lower wage scales. The combined influences of two such handicaps on our foreign commerce will be reflected most seriously in our trade balances.

Of course, we may enact and enforce statutes either in ignorance or in defiance of economic laws, but we cannot thereby suspend their operations, nor escape the consequences of their violation. We lack no experience of this truth in respect of our monetary statutes, and the experiences of the past will be renewed from time to time until our statutes shall be made to conform to natural laws.

These contentions undoubtedly are sound, but however interesting it might be to follow them, it will be of greater practical benefit to pursue a different line of thought. The fact of public hostility towards trusts, monopolies, and big business generally, and a determination to control them even at the cost of destruction, might better be admitted, and the time thus gained be employed in seeking the cause of this attitude and in endeavoring to find the best method of dealing with it.

The enormous increase in the cost of living within the past ten or twelve years has been felt by all classes, and particularly by wage earners and those possessing fixed incomes. During that period trusts and combinations have flourished and multiplied. The manufacturers of nearly every necessary of life have grouped and combined, always with the apparent result of raising prices and the cost of living. The public has groaned under this burden, which now has become intolerable. A change is demanded; and a change there will be. In fact, it already has come. But unfortunately the change probably will be for the worse. Certainly there is no evidence thus far that it will be for the better. When this is discovered, as it will be in time, public resentment may know no bounds, because of disappointment and failure. The people have been misled in matters of cause and effect on prices, and these are fundamental errors. The public has been told, and now believes, that the trusts have wickedly "raised prices," and therefore the public will destroy the trusts. The truth, in definite and concrete terms, is this: No trust or combination of capital, organized for the purpose of raising prices and thereby making extortionate profits in trade, could exist except through a virtual monopoly of some natural product. (Secret trade processes and patented inventions, which partake of the nature of natural monopolies,

do not and should not enter into this consideration.) In every case of a trust, competition has been, and always will be, inevitable; while the numbers of trusts virtually monopolizing any natural product in this country are so few that they may easily be identified and brought to book. The dangers from this source and from trust operations generally have been greatly overestimated. The one purpose alone which can bring into existence and sustain with profit any large combination of capital engaged in trade is the effecting of economies in manufacture, sale and distribution. Naturally these influences, even under the mildest and most nominal state of competition, would have a tendency towards establishing and maintaining stability of prices, and towards offsetting the upward pressure of other influences. But we know that there has been upward pressure sufficiently strong to overcome all the economies effected by the trusts and to bring enormous rises in prices. If it be not the trusts, it may be well to inquire what agencies are responsible for these rises.

This pressure has been exerted steadily and with increasing force by a number of perfectly well-defined influences, the aggregate weight of which amounts to many times the combined influences of all the trusts. Among these other influences, are:

I. The actual increase in the character and volume of our necessities, and in the consumption of our natural products. This may well be illustrated by the home consumption now of practically all our grain at one dollar or more per bushel, as against our former export of large quantities at fifty or sixty cents per bushel.

II. The increased cost of producing food and raw materials, because of increased land values, which in turn are due in large part to the extension of railways, and to the increasing radius of urban and suburban development through the use of the automobile and the trolley.

III. The increasing ratio of urban and suburban population, and the decreasing ratio of farm population, resulting in scarcity of productive farm labor and in an oversupply of non-productive clerical, half-educated, unskilled city labor.

IV. Our national habits of profligacy and extravagance; our constant indulgence in a higher, more expensive and luxurious scale of living, which in turn compel demands for increased wages and higher pay. This may well be illustrated by the increased per capita cost of administering municipal affairs. In sixty years this cost in New

York City has increased about twelve hundred per cent, or from about \$2.50 per capita to nearly \$30.00 per capita annually. Since this enormous increase falls on property owners and taxpayers, necessarily it entails higher rents, higher property values, higher costs of manufactured products and higher costs of living. These entail higher wages and still higher living costs. The one accentuates the other.

A better illustration may be found in the "enormous increase in the variety of expenditures for unproductive consumption." "Such, for example, are the family automobile and telephone, theatres and picture shows, jewels and extravagant dress; amusements, excursions, and vacations, societies, clubs, dinners and card parties," with an innumerable list of similar pleasures and entertainments, the maintenance of which is expensive in the matter of cash outlay and doubly so because their support requires the employment of many hundreds of thousands of individuals in unproductive pursuits, whose potential capacity to produce food or raiment for themselves and others not only is lost to the community, but whose own sustenance must be produced, manufactured, transported, sold and delivered by others.

In the consideration of all economic questions, and particularly those relating to the cost of living, there is one fundamental truth from which there is no escape, and that is that all which we eat and wear and subsist upon is at last, directly or indirectly, the product of the soil. As the soil producers decrease, and the non-productive consumers increase, the cost of necessities must continue to rise. Every individual consumer, whatever his station, his position, or his means, if he be not a producer himself of some necessary of life, is a charge upon those who are. In the working out of economic law that charge must be compensated. This fact is as certain and as inevitable as death itself.

V. The enormous increase in the production of gold.

Of this factor the public knows little or nothing, but its influence on prices is of the very greatest importance. It may be counted at present one of the dominating factors, but one whose influence may shortly be expected to diminish, because of the improbability of continued increases in production beyond the world's needs.

Due apportionment of the weight of these several influences on

prices, on the costs of living, and upon our economic problems generally, would seem to acquit the trusts of a very large part if not of all responsibility for these burdens. Indeed it is not at all certain that prices might not have been higher but for the trusts and for their economical production and distribution of goods; nor that prices of all manufactures may not rise still higher when the trusts have been disorganized. The question remains to be settled. But in proposing its settlement the facts should be kept in mind that the rise in prices has not been confined to commodities controlled by the trusts, and that rises in the case of trust-tainted goods have not been greater than they have been in farm products or in land values. Certainly the "Millers' Trust" did not put up the price of wheat; nor the "Spinners' Trust" the price of cotton; nor the "Packers' Trust" the price of cattle. It is well enough to say that in the cases of these and other similar raw commodities, whose production is not controlled by trusts, the rises were due to increased demands with which the trusts have nothing to do. Granted. But what is causing the increased demand except the forces enumerated, which are wholly extraneous of all trust influences? Are not these extra-trust influences equally operative in respect of the prices of manufactured goods of all kinds, whether controlled by trusts or not, and in respect of labor as well as of land values and farm products? The fact must be acknowledged, and it suggests much food for reflection, if it does not indeed supply conclusive evidence that the trusts have had but slight influence, if any at all, on the rise in prices.

It would require too much space and elaboration of detail to undertake to trace the combined effect of these extraneous influences on prices generally, or even upon the cost of a single manufactured article, but in view of its pertinence, and instructive value, it will be well worth while to examine the question briefly. Let us take the cost of a sirloin steak, served in a first-class Fifth Avenue restaurant to-day, as compared with the cost of it twenty-five years ago. In the first place the steer is bred and grazed for several years on land worth anywhere from ten to twenty dollars per acre, as against fifty cents to one dollar then. The investment in the breeding cattle has been more than doubled, the wages of herders increased, and the living expenses of the stockman doubled; the animal is transported north and fed upon corn which has doubled in price; the expenses of the feeder (and his helpers) have increased, his lands have doubled

or trebled in value. The animal is shipped to a central market and sold through a commission merchant, who adds his tolls. The packer buys and absorbs all additional costs up to this point. His initial outlay and interest charges are greater. He faces increased costs of butchering, refrigerating and distributing, because of higher rents (or land values), taxes, operating costs, labor (both common and skilled), and of every other element entering into the manufacture and sale. Then comes the retailer, with his increased rents and other expenses, including delivery. Finally, the caterer again with his higher rents, larger pay to chefs, stewards and help. Thus we see all along the line, from prairie range to dining table, a continuous accumulation of costs. Included in these items are at least five distinct increases due to higher rents and land values. First, the grazing land, then the farm, the packing plant, the retail shop, and the restaurant. There probably are fifty items of increase due to higher labor costs, and as many more in the matter of materials used in manufacture and transportation sale, and service. In each instance a small percentage of profit must be added on the increased outlay; thus each succeeding charge operates to compound all the preceding ones.

This illustration is typical. It might as aptly be made of a plate of oysters, of a silk dress, of a pair of shoes, or of a locomotive.

The illustration affords but a bare outline of the continuous piling up of charges by every hand through which an article passes. In absorbing the product the consumer absorbs all these charges, with their compounded and multiplied profits.

However much these facts may be deserving of consideration; however little influence the trusts, as such, may have had on the rise in prices, the people honestly believe that they have been the victims of corporate rapacity and greed. They believe, and not without some reason, that they have been plundered and oppressed. Few of us indeed are there who could honestly say in our own hearts that we have not known of some such instances. All of us do know that some years ago things were done and sanctioned by men acting in their capacities as directors of corporations, which they as individuals would have scorned to do. Happily, we have grown out of that. We have learned in such cases to hold the individuals themselves responsible, and this marks the beginning of the end of the practice. Just so, we have grown out of another and more primitive condition of

society, wherein cold-blooded murders were commonly committed "on the field of honor," under a code which permitted every man to be the judge and avenger of his own honor. I do not seek to defend corporate dishonesty, nor to justify their corrupt practices of the past, any more than to defend the duel; but merely to present an undistorted view of the fact that the tolerant state of society which permitted honorable assassinations a hundred years ago is closely related to a similar state of the public mind which until recently permitted and sanctioned the practice of dishonest corporate acts. It is the fashion now to proclaim the dishonesty of the men who did these things, and to cry aloud for their punishment, because public sentiment has changed and now demands corporate as well as individual honesty of purpose and of conduct. This is good, and as it should be; it is a distinct advance. But those of us whose grandfathers believed in and for the most part practiced the "code of honor" would scarcely be willing to admit that our ancestors were murderers at heart. I have heard men now living and occupying high places in the public service, whose honesty and integrity cannot be questioned, declare that the fortunes which they amassed while in trade came in a large part from railway and other rebates. Who, indeed, in the past has not enjoyed some such favors? Who, for instance, has not at one time or another ridden upon a railway pass, and while doing so thought it perfectly proper? Yet the majority of us, now not legally entitled to it, would consider it dishonest to accept a pass, would scorn to use it, and would look upon its offer as in the nature of a bribe. This is not because we are better than our fathers were, but only because the fashion has changed for the better. For this very reason, we should not, nor can we in fairness permit our judgments to become beclouded in respect of the honesty of men who labored even in recent times under different standards.

This change in sentiment on the part of the public does not relate to small manufacturers and dealers, because the public does not fear them as trade units, and does not understand what a tremendous factor they are in the general programme of price raising. Nevertheless, these small competitors while standing in the front ranks of reformers and accusers of the trusts, are exacting and successfully wringing from the public percentages of profits in their transactions which would put to shame the most rapacious monopoly. The operations of one big malefactor, or of a group of them, may be

conspicuous by reason of size, and therefore be easily assailable, while the operations of these small traders pass unnoticed, although in the aggregate they are far greater than those of the trusts and conducted by methods far more oppressive and predatory. Perhaps when the trusts have all been dissolved, and the expected fall in prices does not occur, the public may, in still further searching for causes, discover what a big factor these little fellows really are, and what an expensive piece of sentimentality it is, at the cost of the public, to maintain them with their limited distributing efficiency.

Attention already has been called to the inevitable failure to reduce prices by "busting the trusts," because a certain fundamental law of trade which called the trusts into existence in the first place, and which has made them an important, necessary and (in some form) permanent factor in trade, is ignored. That law is embodied in the inexorable necessity of meeting competitive prices and if possible overcoming them by reducing the cost of production and sale. It has been said that the tariff, which is an artificial law, is the "mother of trusts;" but if so, then the necessity of keeping down the costs of manufacture, which is the natural law of competitive trade, is their "father." We may ignore the law, but it will not cease to operate. Having destroyed the power of the trust to cheapen the cost of production and sale, the result must be increased cost to the consumer. Let us never lose sight of the fact that no manufacturer, whether a trust, an independent corporation, or an individual, ever can or ever does for any considerable period absorb and assimilate losses incident to increased cost of production and sale, whether such losses are occasioned by increases in wages, or in the cost of raw materials, or otherwise. In the very nature of things it would be impossible to do so and remain solvent. Profit is the ultimate aim of all trade. The consumer not only pays the profit, but the total cost of production, sale and delivery.

The question of cheap distribution is one which presses harder and harder upon the independent small manufacturer. It is a question of the relative cost of selling his goods as compared with that of his competitors, the trusts. Does anyone suppose, when the trusts are dissolved, that the small manufacturer will be better able thereby to reduce his selling cost? Let us take, for example, the manufacturer of a single complete line of agricultural implements—plows, including,

of course, harrows, drills, seeding machines, rakes, cultivators, etc. In order to sell these goods to the trade he must maintain a sales organization and a depot at each of the principal cities in the farming region. His big competitors cover the field, and so must he. But inasmuch as he manufactures only one line, his selling expense in proportion to sales is too great as compared with that of his rival—perhaps a trust—which may have brought together in combination a group of plants manufacturing all lines, or many lines of farm implements and utensils, from threshers, buggies, wagons and automobiles, down to plows, windmills, gas-engines and cream separators. The selling of these several lines may be effected at but slightly increased cost over a single line. This is one of the most stubborn and pressing facts confronting American manufacturers in all save the few lines where there is little competition or where selling costs are nominal. The inevitable result of this pressure is to draw the independent into some form of selling alliance. The original and natural plan was to combine in competing lines, incidentally removing as many competitors as there were units absorbed; but (except where a monopoly might have been so formed) the removal of a competitor remained a mere incident, the chief thing gained being a scaling down of selling costs, thereby strengthening ability to meet the remaining competitors in the field. The method was effective and insured profits without any advance in prices. But since this method had become illegal, the same necessity still exists, and we find a tendency to form new groups of non-competing but allied lines. This re-grouping must and will go on, unless prices are to be still further advanced.

Consider the great mail order houses and department stores; how they have grown and are prospering. How many thousands of small merchants, manufacturers and dealers have they put out of business? What is the secret of their growth and prosperity? It is merely a question of economical and efficient merchandising, and of cheap distribution, the buying or manufacturing of goods by wholesale and the retailing of them at low selling cost. This cannot be called trade piracy, nor oppression. The prosperity of the department store, which serves the urban population, and of the mail order house, which serves the rural districts, attests their popularity and proves their economic usefulness. And yet they do undoubtedly strangle the little fellows. If anyone doubts this, let him make inquiry of interior merchants and tradesmen throughout the country, and

even of the more pretentious dealers in small cities near the distributing centers. No farmer ever hated more violently, or for better reasons, a railroad which cut his farm in two, than do country merchants hate and fear the growing power of the big distributing stores. On questioning an officer of one of the large organizations of this kind, which is located in the middle west, and which commenced business "on a shoestring" not many years ago, he made the surprising statement that his company enjoyed its largest trade in the east, particularly in the states of New York and Pennsylvania. Being asked how he explained this singular fact, when the west and south naturally would be considered his best and most profitable fields, he said that the larger sales in the east were due to its denser population and to better distributing facilities, through the Rural Free Delivery Service. No doubt these reasons are good, but probably a truer explanation may be found in the violent hostility of the country press of the west and south, which naturally is in sympathy with local tradesmen. The eastern press is not so hostile, because the influence of the invasion is less apparent there. These stores prosper because they give better values for the same money than the small dealers can give. And yet, among the reasons urged recently by retail cigar dealers of New York for governmental interference with the business of the United Cigar Stores, was that they can and do give the people better values for the same money. Even if these stores are a trust, under strict interpretation of the law, is it possible, in the face of such statements on the part of independent dealers, to believe that the dissolution of the combination would be followed by a fall in retail prices of cigars?

Again, to emphasize the controlling importance of the questions of sale and distribution, let us examine into the case of the packers, who have so long been under fire. Their organizations and trade agreements, if such exist, may constitute a trust; perhaps they do. But even so, an examination of the facts will show that the public, who are the consumers of meat, and the farmers and stockmen, who are the producers of it, are the chief beneficiaries of the combination. In view of popular misunderstanding and prejudice, and of vigorous prosecutions of the packers by the government, these statements require analysis and proof. The packers buy a bullock, say of ten or twelve hundredweight, paying at present prices from sixty to seventy-five dollars per head on foot. They slaughter the animal,

sell and distribute the product, manufacture hide, hair, bone, blood, offal, hoofs and horns, and receive a clear gain of less than one dollar per head. Even this small profit is secured only by employing the most exact methods and exercising economies unknown and impossible under old methods of local slaughter. The public receives the best of meats, carefully inspected by the government, both on foot and dressed, free of the possibility of diseased conditions, slaughtered and refrigerated under the best possible sanitary surroundings, transported and delivered clean and wholesome to the consumer. The producer receives a better price than he ever did or could if the "system" were dissolved and cattle were butchered at hundreds of small slaughter houses scattered everywhere. The yearly profits of the packers on the total volume of their business amount to less than two per cent. Can any large industry, whether conducted as a private enterprise, as an independent company, or as a trust, safely operate on a smaller margin? It is so small, in fact, that the slightest blunder or miscalculation would turn the business into a loss. Where the profits are so slender in proportion to volume, and are gained only by the strictest economy in every department, is it conceivable that prices to the consumer would be reduced by terminating these methods? Under such conditions, in so important an industry, can there be any reason for further regulation than the prevention of unfair competition or the use of oppressive methods against the independents? The profits of the "Packers' Trust" on gross sales are less than one-third in percentage of those of the big mail order houses, whose existence already has been shown to be an economic benefit. That the packers' methods are neither unfair nor oppressive to competitors and independents is proved by the fact that a number of independents are operating successfully and peacefully in competition.

Take the Steel Corporation, now under attack by the government. Before its formation the steel trade was chaotic, and exhibited a series of peaks of high prices and valleys of depression that were truly demoralizing. Through efficiency and economies in production and sale, and with no unfair or destructive methods, the corporation has created and maintained for ten years a condition of equilibrium and stability in the trade unknown before. It has not extorted high prices in comparison with other lines of manufacture. Its methods and operations have been open, and its affairs, including its profits,

so fully and frankly exhibited to the public, that the corporation has been held up as an example and a model. Its policies have been sound and conservative, its securities have been bought by the public and accepted as standard industrials. Can anyone fairly say that this company's operations have been subversive of public interests? Can any open-minded person believe that a disintegration of this company will benefit the public or the company's 120,000 shareholders? Does the public generally know that in the interests of economy of production this corporation has expended probably one hundred million dollars in building great steel plants at Gary, Indiana? This site, at the foot of the Great Lakes, was selected in the light of experience and practical knowledge as being the one particular place in this country where the ore, the fuel and flux, necessary for making steel, could be most economically assembled in their raw states, manufactured and distributed on a large scale. All this has been done, and a new city created where sand dunes were before, not in order to raise prices, but to reduce cost. This great industrial development is the concrete result of a combination of capital, brains, experience and business sagacity of the highest order. Wherever such combinations exist in the aid of trade, as in this instance, their disruption, far from doing good, will amount to public calamities.

Let us take another example, which is chosen because it involves one department of the business of a great corporation, which though highly competitive in other departments, is in this particular one nearly an absolute monopoly, and as unique as it is useful and beneficial in its monopolistic operations. I refer to the sleeping car business of the Pullman Company. As manufacturers of all kinds of passenger coaches, freight and street-railway cars, they are strong and active competitors, as all car-builders know; but as owners and operators of sleeping cars, and certain classes of parlor cars, they have no competition. If there were not some good reasons, beneficial alike to the railways operating these cars and to the public using them, this condition of monopoly could not exist. These reasons are simple and economically sound. They lie in the fact that outside of two or three of the big systems no railway uses normally in its passenger service, or could afford to own, more than one-half the number of sleeping coaches and tourist cars which may on occasion be required to move its seasonal or special excursion traffic. It would be a dead loss to have capital permanently invested in idle cars, or in those used

only on such occasions. In the same manner exactly would it be unprofitable in operation and impossible in competition, for a manufacturer having high seasonal requirements of capital for short periods to pay in as permanent capital an amount equal to his maximum needs. The alternative is to borrow. The Pullman Company for this reason has grown to be a clearing house for high class standard sleeping car equipment, upon which all the "borrowing" roads may and do draw, on short notice, according to their needs, paying only for what they use and for the time the cars are employed. The total of such equipment maintained by the Pullman Company is designed to be equal to the requirements of all the roads at any given time, as has been demonstrated in their experience. In physical railroading it is a unique application of the Central Bank idea of concentrating gold reserves for effective and economic use. In the case of the Pullman Company great economies are effected, for there are not large numbers of idle cars. The company can, and does, therefore, maintain uniform and incomparably superior service, and supply better and cleaner cars at far less cost to the roads and to the public than the railways themselves could do. Take for example the easy and expeditious moving of the crowds that flock to Grand Army meetings, political conventions, etc. Every road leading to the place of meeting makes requisition and is supplied the needed cars. Without such an arrangement the moving of crowds with speed and comfort would be impossible. Shall we break up this mutually satisfactory service because it is a monopoly, and either go without sleeping cars, or pay higher prices for less clean, comfortable and well served ones? The same idea underlies the operation of livestock car lines, refrigerator cars, and others of like kind. The principle might with great economy be utilized on a large scale in the case of freight cars, for the lack of which traffic often is impeded on the poor and smaller roads.

While we are on the subject of monopolies, it may be well briefly to discuss the two remaining classes with which we have to deal in this country. Fortunately neither is charged with any dangers to the public. They are:

I. Local Monopolies of Public Utilities.

This class includes the telephone, water, gas, electric light and street-railway companies, and similar corporations depending upon public franchises. Generally they are strictly regulated, and have

limited franchises; more often than not the public either shares in their profits, or regulates their charges, or both. Their operations are no longer a menace, and they need not be discussed.

II. Trade Monopolies, based upon inventions or discoveries, the basic ideas of which are protected by government patents.

The essence of these monopolies is granted by the government itself in the letters patent, which confer for a period upon the patentee and his assigns the right to exclusive use and benefit of the thing patented. The lawful owners of such monopolies are entitled to enjoy their benefits, and to the full protection of law, except when they endeavor to oppress others in the enjoyment of similar rights based upon other patents. When they seek to oppress or to destroy the business of others operating under similar or competing patents, they properly come within the monopoly act and the law seems amply broad to restrain them. There appears no danger, therefore from this source, nor any reason seriously to consider its economic aspects. The patent law is wise and just. The purpose, of course, is to stimulate useful inventions and discoveries, and it has been entirely adequate for that purpose.

The burden of the foregoing arguments and illustrations may be summed up in the following postulates:

I. Corporations are useful and indispensable instruments of modern commerce.

II. Large aggregations of capital are necessary in a great nation like the United States for the most efficient production, transportation and distribution of the necessities of life.

III. Thus far there has been found no satisfactory substitute for the corporation as a means of amassing, holding permanently under legal control, and efficiently employing large capital in industry and trade.

IV. That the efficiency of the corporate unit may be, and often is increased by combination with other units in the furtherance of trade.

V. Corollary: 1. The best interests of the public will be served by the preservation of large corporations and combinations of capital. 2. The remedy for all trust and corporation evils lies not in their disruption, nor in the strangulation of their efficiency, but in their regulation, with due regard to their rights and objects.

In the light of these evident truths, it would seem that public

hostility towards large corporations merely as such is not justified and that the policy of arraigning such corporations on the charge of being trusts is not only a mistaken one but a policy likely in the long run to be highly detrimental to public welfare. This statement is not intended as a criticism of officers of the government who are prosecuting the trusts. No one can in fairness make such criticisms. The law is on the statute books, and it is their sworn duty to enforce it. But the course which would insure the greatest good to the public lies not in disintegrating and disrupting trusts, whose existence in the main is based upon sound principles of economy, but in the publicity of corporate affairs. And this means not only trusts and combinations of large capital, but those of every size and dimension doing an interstate business. The proposal to regulate by means of federal incorporation is of doubtful legality and wisdom. Such an undertaking not only is unnecessary but involves the surrender by the several states of a portion of their sovereign powers, with which they would be slow to part. The same object might better be accomplished by means of a federal license granted to all corporations carrying on interstate trade; the granting of such a license being contingent upon each corporation paying a tax on its earnings, as is now required, and supplying to the Commerce Commission, or some other competent body, detailed statements of its affairs. The statements should set forth fully the corporation's financial position, and the amount of its earnings and dividends, and should be signed and sworn to by certain officers and attested by a majority of the directors under penalties for falsification, and should be published annually in a report to Congress. Such details as the names of a corporation's shareholders, its business secrets such as cost and selling prices of goods, its expenses, and all other similar information necessary for the Commission to determine the fairness or unfairness of the company's methods, should be supplied under oath, but such information should not be made public so long as the business was conducted lawfully. The commission of any act in restraint of trade could be punished in one of two ways, or both. First, by the revocation of license, the mere threat of which generally would be ample to insure proper conduct; or by proceedings under the statute. The Commission should have no power to regulate prices. The theory of such regulations is unsound and contrary to all laws of trade. In practice it would undermine and eventually destroy national pros-

perity. The right to gain profits in trade by all fair and legitimate methods belongs inherently to every man. So long as an individual or a corporation employs only these methods the right to trade should neither be denied nor curtailed. "Fair and legitimate trade methods" should be broad enough in meaning to include not only trade secrets and processes, but economies, improved machinery, all the fruits of energy, thrift, skill, and special training, foresight, natural manufacturing and selling ability, and of that sagacity which we may call trade instinct. These are of the very essence of successful and prosperous trade, I may say the very red corpuscles of its blood. Persons and corporations using only such methods in trade are entitled to all their profits whatever they may be, and are entitled to buy and sell at whatever prices they choose. Such methods reward efficiency and stimulate trade. They inflict no injuries upon anyone, but result only in good to the public.

But the Commission should have ample powers to ascertain, suppress and punish all unlawful competition in restraint of trade. Such a plan of dealing with corporations, big and little, is reasonable, just and practicable. It is constructive. It would take business permanently out of politics, than which no greater blessing in respect of trade could befall the people. It would set at rest all fear of oppression and all dread of the "baneful influence" of the trusts on prices.

In considering these important but vexatious problems, let us strive to get at the facts; let us be just towards capital; let us be honest unto ourselves, and fair to the public. When in this state of mind our judgments are likely to be righteous.

GOVERNMENT REGULATION OF BIG BUSINESS IN THE FUTURE

BY HENRY R. SEAGER, PH.D.,
Professor of Political Economy, Columbia University.

The problem of determining the effect of the Sherman law on the business of the country is like that of determining the effect of the protective tariff. We have had a protective tariff for nearly one hundred years, and at any time during that period, in many American communities, it has been possible to find one set of people who viewed it as the mainstay of our national prosperity and another set, equally able and well-informed, who considered it a national curse. It is not surprising, therefore, to find similar differences of opinion with reference to the newer question whether the trusts are a benefit or an evil. Viewing them as an evil, enthusiasts for their suppression have hailed the anti-trust act as the *Magna Charta* of the American business man. Seeing in them much that is good, defenders of the trusts have asserted, to quote from a recent address, that this act has cast on American business "a blight greater than the Civil War itself."

One reason for this diversity of view has been uncertainty as to what the law really means. Up to 1894 this uncertainty acted as a deterrent to the launching of new combinations, although it did not prevent old combinations, like the Sugar Trust, from reorganizing as New Jersey holding companies. The decision in the Knight case in that year—the first case under the act to be passed on by the Supreme Court—was believed at the time to render the law quite innocuous. The court held that the act could not be invoked to prevent a New Jersey corporation which already dominated an industry from still further strengthening its control by acquiring competing plants in another state. From this it was hastily concluded that monopolistic manufacturing combinations could not be interfered with under this federal statute. Mr. Moody, in his "Truth about the Trusts," presents a compilation which indicates how completely business men ignored the act during the years which followed this decision. Up to the time of the business depression

of 1893-97, only eighty-two combinations had been formed, with an aggregate capitalization of less than one billion dollars. From January 1, 1898, to January 1, 1904, two hundred and thirty-six combinations were launched, with an aggregate capitalization of six billion dollars. If further evidence were needed that the anti-trust act was considered a dead letter at this time, it is found in the decision of the government virtually to abandon all attempt to enforce it. During the entire four and a half years from March 4, 1897, to September 14, 1901, when Mr. McKinley was President, only three prosecutions were started under the law. One of these was against a local live-stock association, and the other two against coal associations of no great importance.

Mr. Roosevelt certainly deserves the praise, or blame, for having changed this situation. The first prosecution started in his administration was, to be sure, against a railroad combination, but the decision dissolving the Northern Securities Company, handed down in 1904, clearly foreshadowed what was to be expected by other holding companies which relied on their New Jersey charters to protect them from federal attack.

With this decision and the vigorous measures taken by the government to push other dissolution suits to a successful issue, the act again became a factor in the business situation. For the years 1904 to 1911, the description of the act as "a blight on the business of the country" is no exaggeration. It was brought home to hundreds and thousands of business men that if the sweeping condemnations of the statute were applied literally, and if "commerce among the states" was held to include all buying and selling across state lines, they were parties to criminal conspiracies and liable to severe penalties. The result was a state of anxiety and suspense which bordered on paralysis. The frequent declarations from Washington that the law would be enforced against rich and poor alike, and that malefactors of great wealth might expect no mercy, hardly tended to relieve this situation, when no large business man could know with certainty whether or not he was a malefactor. Even official declarations from the White House as to how the law was to be enforced and as to the distinction between good trusts and bad trusts were of little avail, because there was no guarantee that the views of the judges of the Supreme Court would coincide with those of the President.

This was the situation last May when the decisions dissolving the Standard Oil and American Tobacco combinations were at length rendered. The first effect of these unanimous judgments against the trusts was consternation. The worst had been feared and now the worst had happened. Further consideration brought reassurance. It soon became evident that property interests would be fully protected in the forms of dissolution that would be approved by the courts, and that few criminal prosecutions against trust organizers were contemplated. It is characteristic of the psychology of American business men that the slight ground for cheerfulness that these considerations would seem to afford has grown, month by month, as the dissolution of the two trusts immediately affected by the decisions has been accomplished without disaster, until now, notwithstanding many adverse factors, a small business boom appears to be beginning. The reasoning of the average business man seems to be as follows: "Anything is better than the uncertainty in which we have been living. The dissolution of the Oil Trust and the Tobacco Trust has not seemed to have hurt business in those fields. At any rate the aggregate securities of each combination are worth more now than they were before the dissolution. Applying this same kind of painless surgery to other trusts will not have much influence on the general business situation. We now know what we have to expect. The country is as big as ever, and it ought to be prosperous. We are tired of marking time, so let's start a business boom!"

Mr. Talbert evidently does not fully share the optimistic and expansive humor that has recently possessed Wall Street. Seeing below the surface, he appreciates that disruption of the trusts and insistence that they must stay disrupted must mean, as time goes on, that many of the advantages of combination will be lost to the country. His paper is an able defence of combinations and an able argument for a constructive policy of regulation, in place of the present negative policy of prohibition of the anti-trust act. I agree with him in his principal contentions in regard to the advantages of combinations, but I think he has overlooked some of the offsetting disadvantages, and I think he is open to the charge of shrinking from the conclusions that seem to be necessitated by his own argument.

I have had the curiosity recently to make a study of such information as is available in the financial press in regard to the business

success of the thirty largest combinations which were in existence before the Standard Oil Company and the American Tobacco Company were dissolved. Nearly all of these great industrials now publish annual statements in regard to their gross and net earnings. The dividend history of all of them is matter of public knowledge, and now, for most of them, extends over a period of a dozen or more years. It is thus possible, even without the inside information necessary to complete understanding, to form some judgment as to their success. The conclusion to which my study leads is that eight of them have been highly successful, seven of them have been fairly successful, ten of them have been unsuccessful, and five of them have been disastrous failures. I believe that a study of a larger number of the trusts would lead to a similar conclusion. Half of them, or nearly half of them, have failed to realize the expectations of those who organized them. If this has been the case, there must have been serious offsets to the economies of combination which Mr. Talbert has described. The chief of these offsets has been, I think, the failure of the responsible directors and officers, through inexperience, incapacity or downright dishonesty, to manage the vast interests entrusted to their care economically and efficiently. In other words, the economies of combination are secured not automatically, but only as the result of painstaking thought and unusual organizing ability. Some of the trusts have enjoyed the services of men of unusual organizing ability and this, together often with other advantages, has enabled them to prosper. Other trusts have been directed by men of only average business ability and integrity, and instead of prospering have lost ground in the fields of industry which they were intended to dominate. The important question for the future is, will the second generation of business managers which is now beginning to come upon the field be able to direct these vast aggregations of capital as the ablest of their predecessors have done? When we consider that these managers must be selected by directors, themselves chosen by widely scattered shareholders, I think it rather unlikely. And as success for a hundred million or thousand million dollar combination is dazzling, so failure must be on a sensational scale. There is no half-way between efficiency and inefficiency where each department depends so vitally on every other department. Either every branch of the business is quickened by the forceful and capable directing head or the hesitancy and mistaken

judgments of that head are communicated to every subordinate. It is right here that I believe we have the source of the persistence of competition, which Mr. Talbert seems to believe in but for which he offers no adequate explanation. The ablest and most self-reliant men, so long as the world's business continues to be carried on under private enterprise, will prefer to be their own men. Salaries, even princely salaries, will not hold them in positions of subservience to boards of directors, after they have amassed sufficient capital to start out in business for themselves. Thus I believe that under a system of fair competition the best business capacity will be found, in the long run, not among the salaried officials of the combinations but among the so-called independents. It is for this reason that I am quite disposed to agree with Mr. Talbert that the proper policy for the government to adopt toward the trusts is one of regulation to require a reasonable degree of publicity for the protection of investors and abstention from unfair and oppressive methods of competition for the protection of consumers against unreasonably high prices.

But suppose that Mr. Talbert's more extreme views in regard to the economies of combination shall prove to be right; suppose that these economies are found to be so considerable that, under the regime of free combination which he advocates, trusts will come to dominate different branches of manufacturing and mining, as semi-monopolistic railroad systems have come to dominate the transportation business of particular localities. Can we then accept his conclusion as to the limits to be imposed on governmental regulation? In speaking of the wastes involved in present methods of conducting retail trade, he says that the co-operative store would be the obvious solution of the problem, "but this leads dangerously towards socialism, the unsoundness of which is in that it tends to undermine and destroy the independence of individual effort and character." In other parts of his paper he gives evidence of the great savings effected through combinations, and of the great service they render in organizing business economically and efficiently, and yet he maintains that regulation of prices by the government, as Judge Gary has proposed, will be quite unnecessary. This is because, in his view, "persons and corporations using only such [i.e., fair and legitimate] methods in trade are entitled to all their profits whatever they may be, and are entitled to buy and sell at whatever prices they choose."

If the enormous economies which Mr. Talbert claims for combinations are real, what ground have we for expecting competition to persist? When the superior efficiency of the large combination is understood, who will be so foolish as to waste his capital by entering as a competitor a field in which competition is foredoomed to failure? And if giving free play to business enterprise leads logically and inevitably to combination, is there not danger that the margin between costs and prices will allow unreasonably large profits to the efficient combination? Does Mr. Talbert believe that railroads should be permitted to charge what rates they choose? If not, how can he logically oppose price regulation for combinations, if it be true that the economies made possible by their large scale operations put their smaller competitors at such a disadvantage?

And if the free play of competition leads to combination, what logical grounds have we for condemning the co-operative store or even state industry itself as "dangerously" socialistic? If his description of big business is correct, are we not moving toward a situation when most of us will inevitably be the employees of giant corporations? Does the policy which these giant corporations, the Steel Corporation, for example, adopt toward their employees tend less to "undermine and destroy the independence of individual effort and character" than would connection with a co-operative store or public employment? Logic seems to me to compel Mr. Talbert to look with a more friendly eye on what he now deems "dangerously" socialistic. Socialism has seemed dangerous in the past because we have been able to contrast it with a system of private industry and enterprise in which there were many employers as well as many employees, and in which the ambitious and capable employee might look forward confidently to becoming himself an employer. If the situation that lies before us is one in which giant corporations shall divide among them the industrial field, shall we not all prefer, so far as possible, to see the economies of combination secured through great co-operative enterprises, in which we may take part, or through an extension of governmental activities, in relation to which we shall be employees, to be sure, but public employees rather than the employees of private corporations? In making this suggestion, I am not unmindful of the circumstances that make a billion dollar corporation, like the Steel Trust with its two hundred thousand odd employees, highly efficient in comparison with a self-governing city

of two hundred thousand inhabitants. I am merely contending that employment by the latter can hardly be deemed to tend "to undermine and destroy the independence of individual effort and character" more than employment by the former. Other arguments than this will have to be urged against socialism, or its dangerous character will seem to the average citizen—an employee of a giant corporation in Mr. Talbert's industrial society of the future—purely imaginary.

I began this paper by comparing conflicting opinions in reference to the effect of the anti-trust law with conflicting opinions in reference to the protective tariff. The moral in both cases seems to me to be that as regards these great questions of national policy we are still in the realm of personal opinion rather than of demonstrable scientific truth. If this be true as regards the past and present effect of the anti-trust act, it is of course even more true in regard to the future. It is thus in no dogmatic spirit, but merely to make my position clear, that I proceed to restate my conclusions. Like Mr. Talbert, I have been impressed by the economies which some of the large combinations have effected. I share his opinion that wise governmental policy would permit business men to combine to secure these economies and that the prohibitions of the anti-trust act should extend not to all combinations, but only to combinations that restrain trade in unfair and oppressive ways. I agree that regulation to secure a reasonable degree of publicity and to prevent unfair and oppressive policies toward competitors should be substituted for sweeping prohibition, and that this can best be accomplished through a federal license system.

I also agree with him that the regulation of prices will probably prove unnecessary if fair conditions of competition are preserved, but not for the theoretical reason he urges. My notion is that in practice the economies of combination will be found to be balanced by the economies that the smaller producer who attends personally to the details of his smaller enterprise can introduce, and that, therefore, competition will continue to be a sufficient regulative force. This will be all the more likely if small producers are permitted greater freedom in organizing selling pools, as is the case in Germany, since it is chiefly in connection with the marketing of products that the economies of combination are conspicuous.

I am quite prepared, however, for the discovery that under a

regime of free combination the giant producer will, in certain industries, have such great advantages that competition will cease to be an active force, as it has so largely in the railroad industry. In this event, I should feel constrained to advocate government regulation of prices, just as most of us now advocate government regulation of railroad rates. Moreover, as regards such industries, if any there prove to be, I should feel that the choice between government regulation of prices and government ownership and operation could not be fairly based on the ground that one policy is more dangerously socialistic than the other. Government ownership and operation of railways is accepted as a matter of course in Germany, and Germans even believe that they can prove that their system is better than ours of private ownership and operation. Germany has also gone a good way toward actually controlling, if not completely owning and operating, some of the trusts, like the Potash Trust. As we succeed, as I believe we shall succeed, in purifying our politics and making government administration more efficient, the misgivings in regard to government enterprises, which we cannot but feel at present, may give way to the belief that monopolistic industries, especially industries like railroads where the public interest is large, should, as a matter of course, be owned and operated by the government. When that day comes, the proposal that the government take over trusts which have demonstrated their monopolistic character may not seem dangerously socialistic, but only reasonable and proper. I do not believe, as I have already said, that many trusts will show a monopolistic character, even though the fullest liberty be given to the combination movement. It is for that reason, however, and not because I believe that public employment will tend more "to undermine and destroy the independence of individual effort and character" than employment by a private monopolistic corporation that I do not look forward to an indefinite extension of state industries.

EFFECT OF THE ANTI-TRUST LAW ON GENERAL BUSINESS

BY ALEXANDER D. NOYES,
Financial Editor, "Evening Post," New York.

The best apology for adding anything further, to the very comprehensive discussions of the anti-trust law which have already been made this afternoon, lies in the fact that no speaker yet has devoted himself to the subject of the afternoon. That subject assigned for discussion is, "The effect of the Sherman law on general business," and it is that aspect of the Sherman act which I shall briefly discuss. There is a familiar story of a puzzled citizen who asked his well-posted friend, "What is this Sherman Act that everybody is talking about?" and who received in answer a scornful look and the inquiry whether he had never heard any one sing "Marching through Georgia." The story might be dismissed as a mere extravagance of American humor, but for the fact that an almost equally extraordinary idea seems to pervade many minds, even in the walks of high finance, as to what the Sherman Act really is and really does.

An eminent lawyer, in a formal brief in court, declared a few days ago that "the losses inflicted by this act on business have been as great as those inflicted by the Civil War." It is an interesting fact that this statement was made in the very week when talk of revival of business confidence, in the face of an unchanged policy of courts and executives in the matter of the trusts, had become the conspicuous incident of the day throughout the trade circles of the country. It was made in a week when the minor companies formed out of the Standard Oil, as a result of last year's disintegration under order of the court, were increasing their dividends, and when the market valuation of these component parts of the old Standard Oil Trust exceeded, when taken as a whole, the highest price ever reached by the stock of the old holding company in the palmiest days of its history.

Mr. Talbert has taken no such extreme ground as this. In most respects, his discussion of the anti-trust law is eminently fair.

Yet I cannot help feeling that a little of this strange misconception surrounds even his very interesting analysis. Mr. Talbert says that strict enforcement of the anti-trust law is impracticable. Well, we might agree upon that conclusion if we could first agree on the definitions. But what is strict enforcement? That is the whole nub of the question.

Does he mean such literal construction as Mr. Justice Lacombe suggested in his famous circuit court opinion of November, 1908, in the Tobacco Trust case, when he said that two individuals, each running an express wagon across a state frontier, who should form a partnership with one another, would at once be amenable to prohibitive clauses of the law? If the business community ever took that dictum seriously, the time for trade prosperity to be demoralized was in the immediate sequel to that particular opinion. Yet that circuit court *obiter dictum* was immediately followed by a year of general business revival in this country and of extravagant speculation for the rise on the stock exchange.

But however that may be, it must be evident that the Supreme Court, by its decisions of last spring on the Oil and Tobacco cases, has effectively put an end to any such interpretation of the law. The prescribing of the "rule of reason" by the Chief Justice, in behalf of a virtually unanimous court, means the fixing of the rule of common sense as the guide to interpretation of the law, and the rejection of the nonsensical imaginary interpretations which interested people have pretended to draw. From the day the law was enacted, there has never been the slightest doubt that such application of it was the purpose of its authors. There was, it is true, an outcry last May against the Supreme Court's "emasculating" of the law and against its "reading another meaning" into the statute by prescribing this rule of reason in interpretation. But that, I think, was effectively silenced when the author of the law of 1890, the venerable ex-Senator Edmunds, raised his voice from his place of retirement to say of the senate judiciary committee which drew up that law—a committee in which such other eminent constitutional lawyers as Evarts and Hoar had an important place:

"The judiciary committee believed that the well known principles guiding the courts in the application and construction of statutes would lead them to give the words of the act a beneficial and remedial, rather than an injurious and technical tone hurtful

to any honest trade. . . . The fear that some literal construction of the words 'restraint of trade' might lead to sacrifice of some just, fair and wholesome business arrangements may be safely dismissed, for, if the principle and purpose of the constitution and act have any foundation at all there can be no such restraint, because such conduct is not restraining but is promotive of and beneficial to the public interest."

To which Senator Edmunds, in a subsequent interview, added the declaration that "a statute that should undertake to define its own terms would at once necessarily involve a definition of its own definitions, and so on. It needs no lawyer to tell intelligent men how absurd and impracticable such legislation would be."

My main criticism of Mr. Talbert's interesting paper, therefore, would affect his remarks on what will follow disruption of Big Business by the anti-trust law. He nowhere points out the probability of such disruption, or an instance where such disruption has occurred, except in the case of combinations so big as to exercise virtual or potential monopoly in their respective trades. So far is the law from declaring a given business illegal solely on the ground of bigness, that we have authority, from the circuit court opinion to the Supreme Court decision in the Oil and Tobacco cases, and from the Attorney-General to the President of the United States, for denying any such scope or purpose to the law. It was denied with the utmost explicitness by the circuit court in its ruling on the recent Tobacco Trust dissolution plan, when it rejected the insistent demand of the independent tobacco interests for breaking into minute fragments the corporate structure of the old Tobacco Trust. And to this consideration President Taft has added the following words, in a message to Congress on the subject, marked by his usual judicial attitude:

"Those critics who speak of this disintegration in the trust as a mere change of garments have not given consideration to the inevitable working of the decree, and understand little the personal danger of attempting to evade or set at naught the solemn injunction of a court whose object is made plain by the decree and whose inhibitions are set forth with a detail and comprehensiveness unexampled in the history of equity jurisprudence."

Therefore, Mr. Talbert's argument as to the dangerous bearing of the law on such interests as our foreign trade and our home manu-

acturing economies is not at all fairly in point, unless he proves that advantages in those fields are not attainable save by the largest combinations ever yet conceived, and under monopolistic or semi-monopolistic conditions. Indeed, a highly interesting question has lately arisen as to whether, at some point, the very bigness of a given trade combination may not deprive the enterprise of these precise advantages. The question has come into the field of practical controversy, through the recent discussion of the cause for broken rails and subsequent railway disasters. In this controversy it has been publicly alleged by eminent railway men, among them Mr. James J. Hill, that the quality of rails laid down to-day under present conditions has deteriorated as compared with what they were a dozen years ago; that rails turned out by the Steel Corporation are inferior in quality and durability to rails purchased from the Krupps more than a dozen years ago; and that rails manufactured now by different plants in one combination will not maintain a uniform standard of quality. This evidence is perhaps not conclusive on the general question, but it is at least suggestive to those who know what happens when a manufacturing plant or combination begins to lack supervision of the whole enterprise from the head, along with pressure from the central committee to maintain dividends on inflated capital. Both of these evils will inevitably arise when the trust passes a certain stage of magnitude. The most wasteful system of manufacture would be that of complete monopoly; this belief is indeed the fundamental argument of the opponents of state socialism. Yet most of Mr. Talbert's arguments as to the efficiency of the trust would, if left unqualified, equally defend monopoly. If bigness, merely as bigness, ensures success in foreign trade and in home economies, and if these benefits cannot be secured except from the biggest present combinations, then why stop short of the biggest conceivable combination, which is monopoly?

I have only one or two considerations to add to what I have already briefly set forth. Mr. Talbert says that "certain fundamental laws of trade called the trusts into existence in the first place, and made them important and necessary factors in trade." I am aware that he refers to the destructive competition of the later eighties and the business demoralization which ensued. But is he quite sure of his history, so far as concerns the great combinations which are really in question? Were the trusts of 1899

and 1901, with their prodigious combination of existing plants and with their subsequent combination of the new combinations, called into existence by such fundamental laws as we are asked to assume, or were they the outcome of a stock promotion mania and an amalgamation craze, such as the world never saw before or since, and probably never will see again? Even in the matter of foreign trade we must ask when it was that the so-called "American invasion" of the foreign consuming world, through export of American manufactures, occurred. The record will show that it was in 1897 and 1898 that the outcry arose in Europe for the European manufacturing world to "stand together to resist the trans-oceanic peril." But trusts such as the steel and copper combinations, as they now exist, were only formed in 1899 and 1901. The "American invasion" was conducted by corporations such as those into which application of the anti-trust law would dissolve the existing enormous trusts. Moreover, export of the products of these and other industries actually decreased when the trusts were formed, a few years later, and its subsequent increase was in a smaller ratio than in the years immediately before the trusts were organized.

In concluding, I wish to express my entire concurrence with Mr. Talbert's opinion that we never can return to the "days of small individual business." But I am personally quite as much convinced that we shall never again return to days such as those in which counsel of the Northern Securities admitted, before the Supreme Court, that the system on which that combination was formed might lead to the lodging of all the railroads in the United States in the hands of a few individuals. Neither do I believe that we shall ever seriously revert to the recently familiar argument of serious men, that competition, with its incalculably beneficial results of past generations on industrial energy, invention and progress, must hereafter be dismissed offhand as a factor in modern civilization.

THE BOGEY OF THE "PATENT MONOPOLY"

BY GILBERT H. MONTAGUE,
New York.

The natural hysteria over trusts has never been better illustrated than in the unreasoning criticism directed against the United States Supreme Court for its determination of the rights of patent owners in the recently decided Dick case.

Suddenly, without warning, and for the avowed purpose of stirring up Congress to change the existing patent law, Chief Justice White vehemently dissented from the decision of the court over which he presides; notwithstanding the fact that that decision is compelled by the constitutional provisions relating to patentable inventions and the statutes enacted in fulfilment of these provisions, and is supported by the overwhelming weight of authority of the courts of the United States, Great Britain and other English speaking countries.

The opinion in which the majority concurred, that stands as the opinion of the Supreme Court in the Dick case, was written by Justice Lurton, who probably has tried more important patent cases than any American judge now living. With him concurred Justice Holmes, Justice Van Devanter, whose experience in patent law while circuit judge was very thorough, and Justice McKenna, who four years ago wrote the opinion of the Supreme Court in the most important patent case of recent years—the Paper Bag case—with which opinion Chief Justice White, then an associate justice, entirely concurred. President Taft, when a circuit judge, sat with Judge Lurton and repeatedly concurred in Judge Lurton's opinions in patent matters. The majority opinion simply states the law as established by an unbroken line of previous decisions in the United States, in Great Britain and in every English speaking jurisdiction. With these decisions, Chief Justice White and Judge Taft, as their entire judicial records show, have heretofore been in absolute agreement.

The clamorous outcry, industriously instigated from Washington, that the chief justice and the other two dissenting justices are right,

and that the majority of the Supreme Court, trained by years of experience in patent law and supported by logic and the overwhelming weight of authority of this and every other English speaking country, are somehow wrong, is a practical application of "judicial recall" without even the safeguards which its staunchest advocates would throw around it.

This epoch-making decision of the Supreme Court arose out of the following facts:

The Dick Company owned patents covering a mimeograph. It sold to a certain Miss Skou a mimeograph, embodying the invention covered by these patents, subject, however, to a license, printed and attached to the machine and reading as follows:

LICENSE RESTRICTION

This machine is sold by the A. B. Dick Company with the license restriction that it may be used only with the stencil paper, ink and other supplies made by A. B. Dick Company, Chicago, U. S. A.

Mr. Henry's firm sold to Miss Skou some ink suitable for use upon this machine, with knowledge of this license restriction under which Miss Skou had bought the machine, and with the expectation that the ink would be used with this mimeograph. The question presented to the court was:

Did the acts of the Henry firm constitute contributory infringement of the Dick Company's patents?

The Supreme Court decided that these acts constituted contributory infringement.

Under Article I, Section 8, Subdivision 8, of the Federal Constitution, Congress has power "to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

Accordingly, Section 4884 of the Revised Statutes has been enacted, providing that a patent owner shall have "the exclusive right to make, use and vend the invention or discovery." This "exclusive right" is in effect three "exclusive rights," *i. e.*, the "exclusive right" to make, the "exclusive right" to use, and the "exclusive right" to sell the patented article.

Since the patent owner's "exclusive right" is composed of the "exclusive right" to make, the "exclusive right" to use, and the "exclusive right" to sell the patented invention, the patent owner may, according as he sees fit, dispose of one, or more, or any part

of these component "exclusive rights." Thus, when he elects to manufacture the patented article himself, he reserves to himself the "exclusive right" to make, and disposes simply of all or part of the "exclusive rights" to use and to sell the patented article. Again, if he elects not to sell the patented article, but simply to lease it on a royalty basis, he reserves to himself the "exclusive rights" to make and to sell, and disposes simply of the right of use. Similarly, if he elects to dispose of only part of the "exclusive right" to use the patented article, he may reserve to himself the "exclusive rights" to make and sell the patented article, and also part of the "exclusive right" of use, and may dispose of simply a portion of his "exclusive right" of use, by granting merely a limited right of use; simply, for instance, the right to use the patented article only under such conditions and only with such supplies as the patent owner shall prescribe.

Like the owner of any other property the patent owner "cannot be compelled to part with his own except on inducements to his liking." Like the owner of unimproved real estate, the patent owner may decline to use his invention, or to allow others to use it. Like a real estate owner who prefers to continue as owner, the patent owner may reserve to himself the right of ownership and sale, and, by lease or otherwise, simply dispose of part of the right to use the property. Like every real estate owner that is a landlord, the patent owner may require that his property be used only under certain specified conditions, and for certain specified purposes, and with certain specified accessories.

The rights of the patent owner are neither greater nor more unusual than the familiar rights of the real estate owners or other property owners. Indeed, the patent owner's rights are vastly curtailed, as contrasted with the rights of other property owners, in that the owners of every other form of property may exercise those rights above described for so long a period as they and their successors may desire, while the patent owner may exercise none of his rights beyond the duration of his patent, and at the expiration of the statutory period of seventeen years must relinquish to the public all of his rights.

Briefly, the Supreme Court decided in the *Dick* case that:

Patent rights are directly derived from the Federal Constitution.

The patentee has the exclusive right to make, sell and use the

patented article. Like the owner of any other property, he may sell or dispose of his property upon any reasonable condition.

The patentee may sell or dispose of the patented article on condition that the purchaser use only such accessories as are made by the patentee, provided that at the time the patentee sells the patented article to the purchaser "the purchaser must have notice that he buys with only a qualified right of use."

The public is free to take or refuse the patented article on the terms imposed. If the terms are too onerous, the public loses nothing, for it may decline to buy or use the patented article; and when the patent expires the public will be free to use the invention without compensation or restriction.

In affirming these propositions, the Supreme Court stated plain, common, business sense, and also long settled principles of law, in reliance upon which enormous business interests have been established.

The court explains its meaning and compacts the kernel of its decision in these words:

A license is not an assignment of any interest in the patent. It is a mere permission granted by the patentee. It may be a license to make, sell or use, or it may be limited to any one of these separable rights. If it be a license to use, it operates only as a right to use without being liable as an infringer. If a licensee be sued, he can escape liability to the patentee for the use of his invention by showing that the use is within his license. But if his use be one prohibited by the license, the latter is of no avail as a defense. As a license passes no interest in the monopoly, it has been described as a mere waiver of the right to sue by the patentee. Robinson on Patents, secs. 806, 808.

We repeat. The property right to a patented machine may pass to a purchaser with no right of use, or with only the right to use in a specified way, or at a specified place, or for a specified purpose. The unlimited right of exclusive use which is possessed by and guaranteed to the patentee will be granted if the sale be unconditional. But if the right of use be confined by specific restriction, the use not permitted is necessarily reserved to the patentee. If that reserved control of use of the machine be violated, the patent is thereby invaded. The right to sever ownership and use is deducible from the nature of a patent monopoly and is recognized in the cases.

Having decided that the patentee may "subdivide his exclusive right of use when he makes and sells a patented device," the Supreme Court next lays down the proposition that "the extent of the license to use, which is carried by the sale, must depend upon whether

any restriction was placed upon the use, and brought home to the person acquiring the article." The court elaborates this point:

To begin with, the purchaser must have notice that he buys with only a qualified right of use. He has a right to assume, in the absence of knowledge, that the seller passes an unconditional title to the machine, with no limitations upon the use. Where then, is the line between a lawful and an unlawful qualification upon the use? This is a question of statutory construction. But with what eye shall we read a meaning into it? It is a statute creating and protecting a monopoly. It is a true monopoly, one having its origin in the ultimate authority, the Constitution. Shall we deal with the statute creating and guaranteeing the exclusive right which is granted to the inventor with the narrow scrutiny proper when a statutory right is asserted to uphold a claim which is lacking in those moral elements which appeal to the normal man? Or shall we approach it as a monopoly granted to subserve a broad public policy, by which large ends are to be attained and, therefore, to be construed so as to give effect to a wise and beneficial purpose? That we must neither transcend the statute, nor cut down its clear meaning, is plain.

After emphasizing the fact that this constitutional monopoly "extends to the right of making, selling and using, and these are separable and substantive rights," the court quotes with approval its language in *Bement v. National Harrow Company*, to the effect that the Sherman Act "clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded thereof."

Chief Justice White, in his dissenting opinion, declares that the *Dick* decision tends "to extend the patent so as to cause it to embrace things which it does not include," and permits the patent owner "to extend his patent rights so as to bring within the claim of his patent interests which are not embraced therein, thus virtually legislating by causing the patent laws to cover subjects to which without the exercise of the right of contract they could not reach." The Supreme Court, in the majority opinion, completely answers this contention. The court says:

But it has been very earnestly said that a condition restricting the buyer to use it only in connection with ink made by the patentee is one of a character which gives to a patentee the power to extend his monopoly so as to cause it to embrace any subject, not within the patent, which he chooses to require that the invention shall be used in connection with. Of course the argument does not mean that the effect of such a condition is to cause things to become patented which were not

so without the requirement. The stencil, the paper and the ink made by the patentee will continue to be unpatented. Anyone will be as free to make, sell and use like articles as they would be without this restriction, save in one particular—namely, they may not be sold to a user of one of the patentee's machines with intent that they shall be used in violation of the license. To that extent competition in the sale of such articles for use with the machine, will be affected; for sale to such users for infringing purposes will constitute contributory infringement. But the same consequence results from the sale of any article to one who purposes to associate it with other articles to infringe a patent, when such purpose is known to the seller. But could it be said that the doctrine of contributory infringement operates to extend the monopoly of the patent over subjects not within it because one subjects himself to the penalties of the law when he sells unpatented things for an infringing use? If a patentee say, "I may suppress my patent if I will. I may make and have made devices under my patent, but I will neither sell nor permit anyone to use the patented things," he is within his right and none can complain. But if he says, "I will sell with the right to use only with other things proper for using with the machines, and I will sell at the actual cost of the machines to me, provided you will agree to use only such articles as are made by me in connection therewith," if he chooses to take his profit in this way, instead of taking it by a higher price for the machine, has he exceeded his exclusive right to make, sell and use his patented machines? The market for the sale of such articles to the users of his machine, which, by such a condition, he takes to himself, was a market which he alone created by the making and selling of a new invention. Had he kept his invention to himself, no ink could have been sold by others for use upon machines embodying that invention. By selling it subject to the restriction he took nothing from others and in no wise restricted their legitimate market.

The all-important circumstance, which Chief Justice White overlooks, that no license restriction is enforceable under the law as laid down by the Supreme Court, unless the restriction is "*brought home to the person acquiring the article*" *at the time the article is acquired*. To make a license restriction enforceable, the purchaser must have notice that he buys with only a qualified right of use. The notion engendered by Chief Justice White's dissenting opinion that Henry would have been held as an infringer if Miss Skou or any other user of the Dick mimeograph had bought Henry's ink at a corner drug store, has absolutely no foundation in fact. The infringement in the Dick case, as the Supreme Court expressly held, consisted in the fact that Henry, knowing of the license restriction, and with the expectation and intention that his ink would be used for the purpose of violating this license restriction, incited Miss Skou, intentionally and deliberately to violate the license restriction—to which Miss Skou, as Henry well knew, had expressly assented when she acquired

the mimeograph—and supplied Miss Skou with the means of accomplishing this wrongful act. Indeed, the court below expressly found that Henry deliberately and knowingly instigated Miss Skou to this wrongful act and even instructed her that if she would pour Henry's ink into Dick's can and throw away Henry's can, she would not be caught violating the license restriction.

The bogey of "monopoly" in non-patented supplies comprehended within license restrictions covering patented articles has many times been dispelled by the courts.

In 1896, in a decision of the Circuit Court of Appeals for the Sixth Circuit, in which Judge Lurton, now associate justice of the Supreme Court, who wrote for the Supreme Court the majority opinion in the Dick case, and Judge Taft, now President of the United States, both participated and concurred, the bugbear of monopoly in respect to non-patented supplies required by license restrictions like those above described was effectually exploded. The court showed that this so-called monopoly, far from offending against public policy, was a positive benefit, for the patent owner could accomplish this result only as he could "make and sell an unpatentable product cheaper than any other competitor;" and "the great consuming public would be benefited rather than injured," for this so-called monopoly could endure only so long as the product turned out with the patented invention and these supplies was "supplied at a less price than had prevailed before the invention."

The same doctrine has repeatedly been laid down by the courts of Great Britain. Only last year, by a unanimous decision of the Lords of the Judicial Committee of the Privy Council, in a decision which determined the law for the entire British Empire, the principles of the Dick case were anticipated and completely accepted. How firmly these principles are established in the law appears from this quotation from one of the leading English decisions:

The sale of a patented article carries with it the right to use it in any way that the purchaser chooses to use it, unless he knows of restrictions. Of course, if he knows of restrictions and they are brought to his mind at the time of the sale, he is bound by them. He is bound by them on this principle: The patentee has the sole right of using and selling the articles, and he may prevent anybody from dealing with them at all. Inasmuch as he has the right to prevent people from using them or dealing in them at all, he has the right to do the lesser thing; that is to say, to impose his own conditions. . . . It does not matter what they are if he says at the time when the purchaser proposes to buy or the person to

take a license: "Mind, I only give you this license on this condition," and the purchaser is free to take it or leave it as he likes. If he takes it, he must be bound by the conditions. It seems to be common sense, and not to depend upon any patent law or any other particular law.

Common sense, therefore, no less than the authorities of the innumerable courts that have quoted this decision, supports this reasoning of Judge Lurton and Judge Taft. As a hard-headed Massachusetts judge well expressed it, since the patent owner might stipulate either for an outright price or for a royalty collected out of the profit that he would make in furnishing supplies at an agreed price for use in the patented machine, "the purchaser, who could not obtain the machine at all, except upon such terms as the owner should choose to impose, might as well agree to pay for it in that way as in any other."

To suggest that such a system tends to create a monopoly in non-patented supplies is absurd. If the patent owner chooses to take his profit in this way, instead of charging a higher price for his patented article, no one is harmed. Granted that he takes to himself a portion of the market for such non-patented supplies. The portion of the market that he so takes is simply the portion that he alone created, by making and selling his own invention. Obviously, had he not made and sold his invention, no one could sell supplies for use in connection with it. By requiring that his own non-patented supplies be used with his own patented invention, the patent owner is taking nothing which in the absence of his patented invention would belong to other manufacturers of such supplies.

From the beginning of the patent system, patent owners have been accustomed to realize the value of their patents by granting to others, for an outright price or upon terms of instalment payments, licenses to manufacture, licenses to sell and licenses to use, either together or separately. Essentially these licenses are all similar. In order to secure one or more of these licenses, to exercise one or more, or a part of one of the "exclusive rights" to which the patent owner is entitled, the licensee, in each case, agrees to recompense the patent owner. The only difference is in the mode and terms of recompense.

When the licensee is required to pay a sum in cash outright, in order to acquire the right to use the patented article, the patent owner is compensated, without regard to whether or not the licensee exer-

cises the right to use the patented article. When the licensee is required to pay a fixed sum periodically in the form of rental, the same result follows. In both instances, what the licensee is required to pay bears no direct relation to the amount of benefit which the licensee derives from exercising the right to use the patented article.

To avoid this result, various license plans have been devised, primarily for the benefit of the licensee, under which the recompense that the patent owner receives, in consideration of giving the licensee the right to use the patented article, depends entirely on the amount of benefit which the licensee derives from exercising such right.

The most familiar plan is that under which the licensee pays to the patent owner a royalty in proportion to the output produced by the use of the patented article. Under this plan, the licensee obtains physical possession of the patented article, together with the right to use it upon the conditions of the license, but is not obliged to pay to the patent owner anything for this right of use unless he actually exercises it; and if he uses the patented article at all, he compensates the patent owner strictly in exact proportion to the efficiency of the patented article and to the benefit that he derives from its use.

Under such a license plan, some means must be devised to register the extent to which the licensee uses the patented article. A frequent measure is the number of articles that the machine produces. When the amount of use or output can accurately, inexpensively and conveniently be measured, either by a register or by an inspection or accounting, this mode of determining the amount of royalty is generally adopted.

In the case of innumerable patented articles, however, like the mimeograph in the Dick case, there is no accurate or convenient mode of recording the amount of use or output and any inspection or accounting for that purpose would be impracticable and prohibitively expensive. A true measure of the amount of use and output is the material used with the patented article. When, as in the case just described, the amount of this material cannot accurately, inexpensively or conveniently be measured, inspected or accounted for, while it is on the machine, or after it has left the machine, it must be measured before it reaches the machine.

By requiring the user of the patented article to obtain such material from a single source, the patent owner ensures the means of

accurately, inexpensively and conveniently measuring the amount of the use and output of the patented article and collecting the royalty so determined, by charging for such supplies a sum sufficient to cover their cost, and also an additional amount in the nature of royalty for the use of the patented article. As regards many patented articles which otherwise could be sold only in small numbers, at a large outright purchase price, no other means of determining a royalty, based upon the amount of use and output, can be devised.

Under this plan, the money burden upon the licensee does not fall upon him all at one time, like the necessity of paying at the outset a large purchase price, but is distributed over a period sufficient to enable him to derive, from the use of the patented article, the means of compensating the patent owner.

Besides these obvious considerations, any one of which alone sufficiently justifies such a license restriction as was presented in the Dick case, there are other considerations which, in a larger view, are even more controlling.

The satisfactory operation of the patented article may, and in many cases does, entirely depend upon its use with specially prepared supplies, or in continuity with other specially adapted machines, or in some particular manner.

An electrical appliance, adapted for use with a particular kind of battery, might be very effective when so used—in which case its usefulness to the licensee would be considerable, and its commercial value to the patent owner would be correspondingly gratifying; while if used with another kind of battery, it might be ineffective—in which case its usefulness to the licensee would be slight and its commercial value to the patent owner would be disappointing. A license requiring that the appliance be used only with the battery specially adapted to it guarantees the highest degree of usefulness to the user, and assures to the patent owner the commercial value of the patented article to which he is justly entitled.

A patented machine, used in manufacture, may be contrived, with great nicety, to take the partly finished product as it leaves another machine, and to continue the process of manufacture for another stage from that point, and then to turn it over to another machine which continues the manufacture from that point. This particular machine, it is obvious, must be accurately adjusted, so as to supplement precisely the work done by the machine that immedi-

ately precedes it in the manufacturing process, and to match exactly the requirements of the machine that will immediately take up the work at the point where it leaves off. The satisfactory operation of the particular machine in question may, and in actual instances frequently does, entirely depend upon the nicety, accuracy and precision with which it is adapted to the machine that immediately precedes it, and to the machine that immediately follows it in the manufacturing process. Unless the machine that precedes it is accurately adapted to bring the half-finished product into just the condition necessary for satisfactory operation upon the particular machine in question, the operation of the latter machine will be unsatisfactory; and the results to the user and to the owner of the patents covering that particular machine will be correspondingly disastrous. Similarly, unless the machine that immediately follows in the manufacturing process is precisely adapted to take the half-finished product in just the condition that it leaves the particular machine, it will inadequately supplement the work that has previously been done, and will wholly or in part prevent the successful result to which the satisfactory operation of this particular machine has fully contributed.

Instances of ingenious and delicate machines, each nicely adapted to perform one stage of a manufacturing process, and together, as an industrial series, nicely, accurately and precisely adjusted to take the raw materials through the successive stages in the process of manufacture until the finished product is eventually turned out may be found in many highly developed manufacturing industries.

As to any patented article of the class of particular types of machines just described, it is obviously proper that the patent owner, in order to insure satisfactory results to the user, and to preserve for himself such commercial value as accrues from the assured satisfactory operation of his machine, may require that the machine be used only with such specially adapted machines and in such particular manner as will insure satisfactory results to the user.

The notion that the patent owner owes the duty to the community of allowing every user of the patented article to experiment with any supplies that the user can find, or to use, in any manner that the user can think of, a patented machine that has been delicately contrived for just one particular use, has no support whatsoever in law or in reason.

Patent owners have an interest in the standing, reputation and

commercial desirability of their patented articles, and may insist upon such conditions, in respect to their use by their customers, as shall insure to the customers, no less than to the patent owners and to all prospective customers, the standing, reputation and commercial desirability of the patented article.

To suggest that the user of the patented article has some kind of natural right to experiment, as much as he likes, with unauthorized supplies, is as ridiculous as to suggest that a tenant has a God-given right to use his landlord's premises in any manner that violates the condition of the lease.

The only reward to those who bear the burden of perfecting the inventions which make possible the progress of the race is the protection afforded by the patent system. The Constitution provides that the inventors who develop their inventions at their own risk and by their own labor and expenditure shall "for limited times" have the "exclusive right" to their own creations. By restricting this limited time to seventeen years, Congress has removed the possibility of oppressive monopoly.

Any proposal to abridge the reward for invention involves the welfare and very existence of the entire community. During the present century the new fields which invention can open must necessarily be fewer than those opened by the brilliant series of pioneer inventions in the century just past. Future inventions will require greater effort and, consequently, rewards which shall certainly be no less than those afforded by the laws and decisions that compose the present patent system. On every hand it is conceded that the efficiency of human institutions must be increased in order to cope with the increasing difficulties of existence. The most important agency for this purpose is invention as fostered by the present patent system. Nothing could be more reckless than to cripple at this time the chief force engaged in solving the problems of civilization. For the future of American industries, and the welfare of the entire country, it is hoped that a correct understanding of the tremendous importance of the present patent system may cure the disrespect of patent rights implied in the hostile comment directed against the recent decision of the Supreme Court and implied in the changes of the patent law proposed by Congress.

DISCUSSION

MR. CHARLES W. BAKER, EDITOR OF THE "ENGINEERING NEWS:" We have been told, gentlemen, that the reason why the trusts were organized was because of the economic advantages of combination. I am far from denying that there are, in certain lines of trade, great advantages in monopoly. I fully agree with the principle that in transportation, for example, we must have monopoly. It may be also that in certain other lines it will be for the advantage of the public to have great combinations of capital and limitation of competition. I think it ought to go on record, however, that the great carnival of trust formation which went on in this country ten or twelve years ago, did not come about because thirty or forty manufacturers saw that they could make great economies by combining and forming a trust. The real forces behind that movement were very plain and simple. A lot of excellent bankers in Wall Street found that they could buy two and two, put them together and sell to the public for six or seven or eight.

You have heard something about the Single Tax and unearned increment on land values. I wish to point out that the trust formation placed an unearned increment burden on our manufacturing industries. The independent manufacturer doing business, under former conditions, expected ten per cent interest on his capital actually invested. The bankers found by combining a lot of concerns, that the public would buy them at a price representing several times the actual investment, and would be satisfied with a return of five or six per cent. That discovery has loaded up our manufacturing industries with an enormous burden of capital on which they are now trying to earn dividends.

The Sherman Act is only one step in control of the trusts. The trust movement has divorced ownership from control. The individual stockholder in a trust or any great corporation has no part in its real control. These great concerns are run by a small coterie of financiers, who may often hold only a small percentage of the stock. Government supervision is as necessary to protect

the hundreds of thousands of small stockholders from robbery as it is to protect the public from extortion.

MR. R. F. DEVINE, ERIE, PA.: I came from Erie to attend these meetings and have had the pleasure of listening to statesmen, college professors and prominent representatives of labor, illuminating the various subjects upon the program.

I have looked in vain for some common ground, some common conviction upon which we could all stand. One speaker after another proceeded with statements contradictory to or disagreeing with the statements of those preceding him and it seems strange that in this late day, statesmen, professors and reformers in behalf of labor who boast of the policy that has prevailed throughout this country should ridicule the honest statements of one of the speakers who by making reference to socialism merely attempted to step out of the beaten path. This gentleman has my respect, for he has shown the courage of his conviction.

I am not destructive. I believe in God and in mankind and in the final destiny of man. My contention is that the underlying cause of trouble is this, that in common with other civilizations we started out in error, ignoring for the most part natural rights. When we founded our government we deemed the highest right to be political and so the liberties of the people are now limited to what can be obtained through the exercise and administration of their political rights, for the fact that there are natural rights was not considered either by the constitution or the fundamental laws of the government.

What I mean by natural rights of man is this, that in so far as we are equal children of God, just so far are we equally entitled to what He created. In other words, God gave us power to labor that we might obey the injunction, "In the sweat of thy brow shalt thou eat bread," and that this divine injunction could be obeyed, He provided a material universe upon which we could exert these powers and gratify our desires.

You may laugh about the single tax, but I want earnestly to declare that this is the great moral reform which is now applicable even in the midst of these complex conditions. It requires reflection to see that manifold effects result from a single cause and that the remedy for a multitude of ills may lie in a single reform. Yet do not

the fruits of the soil belong to him to whom belongs the soil itself?

Our nation is going in exactly the same direction as that in which every other nation has gone. Our ship of state is doomed to end upon the rocks unless we retrench and restore to the American people their inherent right to the use of the earth. The American people have a natural moral right to an undivided interest in the land of their country—the coal fields, the farm and mineral lands, the surface and interior everywhere. This can be obtained only by the application of the principles set forth by one of the speakers and advanced more comprehensively by Henry George, principles based upon both a keen sense of moral right and a clear understanding of practical economics.

Why is it that these learned men must wait for a breaker boy to tell them this? That is where I got my early education, in the anthracite coal fields. But after years of travel, of thought and serious work upon these problems in an earnest endeavor to solve them, for myself at least, I found, I believe, this fundamental truth, that private appropriation of rent, or the earnings of land, is morally wrong. Indeed it is the greatest and most fundamental wrong. Selling money is a moral wrong, for money is created by law, by the fiat of the government. It is not the product of labor and ought not, therefore, to be bought and sold. Land should not be bought and sold. It is the gift of God to man, not to this generation merely, but to all generations, a gift which all may use, but none claim as his alone.

No one comes into the world save through the grace of God, and his presence therein attests his inherent right to equal enjoyment of God's bounty. To things created by our own labor we have an absolute right, but to those created by the will of God we all have equal right. He is the beneficent Father, we are His children; and, as Henry George well said, "It is a natural law that this provision has been made for the organization of society."

MR. F. L. KING, PRESIDENT, GOOD GOVERNMENT CLUB OF PENNSYLVANIA: The effect of industrial combinations, culminating in the fifteen billion dollar monopoly of monopolies in finance, commerce and industry, is felt by everybody—the laboring man, the business man, the manufacturer, the farmer the consumer and the govern-

ment—in the high cost of living throughout the land, to the extent of from thirty to forty per cent excess of dividends unjustly and unreasonably paid on fictitious values on railroad, steamship and industrial securities.

This has been insidiously accomplished through re-organization after re-organization increasing the original fictitious values until it has become a menace to the people and the nation. No one industrial concern can earn or be allowed to extort over one billion dollars in ten years within the limits of the Sherman law, and with regard to the rights of others; and one thing is certain, there can be no improvement until the links of this endless chain be separated into their component parts and properly regulated by the state and federal governments.

Competition, as a safeguard to national welfare, depends entirely upon state and federal regulation by state and federal authorities conjointly; restricting trusts or corporations to not more than twenty per cent of any business, raw material, or money; preventing interlocking of directorates and interholdings of stocks, so as to secure fair play in business, as also property and individual rights.

This regulation should prohibit the relinking of all component parts of trusts, except where wise, prudent and advisable for competitive purposes, as also the possibility of trust control by the changes of political parties or otherwise. No intelligent business man, without an ulterior motive, can advocate that these trusts should be allowed to continue in their present courses of enslaving the public for their selfish benefit by regulating a part rather than all of them, and no matter how much the inexperienced may object to regulation, it is the only way that right and justice can be secured and maintained.

It is always to be borne in mind that the growth of this endless chain of special privileges is due more especially to one faction of Wall Street's high financiers, which, if permitted to continue, would not only ruin individual and corporate home trade but that foreign trade, for which the Panama Canal was built, and which is so essential in building up an interchange of commerce with Central and South America.

Regulation that really regulates is the only efficient and effective process by which trusts can be broken up and controlled so as

to prevent the swamping of the courts with endless complaints; and unless laws be enacted that will put all corporations on the same footing, there will be endless trouble, in which trusts and corporations will defer indefinitely the needed remedy.

The Interstate Commerce Commission, without power to regulate capitalization and limit dividends, has twenty-one years struggled to reach its present incomplete measure of regulation of railroads, and has this month thrown upon the courts, entailing endless delay and expense, over four thousand disputes. This sort of thing, this trifling with business, must not only be avoided in relation to each line of commerce, but in railroad carrying as well. The laws should be explicit. Empower the arbitrators to settle these matters in advance, and render unnecessary the bringing of erroneous disputes before either the commissioners or the courts and thus entirely side-track two-thirds of the bridges thought necessary to cross and teaching the valuable lesson of how to perform business honestly and right, by the example of respect for the law, and how to effectively correct the business morals of the nation.

No citizen has the right of free contract, verbal or written, directly or indirectly, or the right to do as he likes, if it injure others; and every violation of the law that tends to ruin the national welfare should certainly be punished as a personal criminal act, for if what has been done by the trusts in the past is not treasonable, then treason has been forgotten.

The readjustment of the tariff, on a scientific basis, considering the differences in costs of production here and abroad, has proven a wise step in advance of the opening of the Panama Canal; but to enable business men and manufacturers to get this business in competition with Germany, and other countries, and hold it permanently by selling at the same prices abroad as at home, anyone can see that still further readjustment of the tariff will be in order in 1914. Moreover, the elimination of fictitious values in railroad and industrial capitalization; the breaking up of control of raw material; reduction in the prices of money; freight rates and costs of production all along the line, are essential before manufacturers and business men can begin to secure that larger proportion of trade, not only in the Western but in the Eastern Hemisphere, to which American citizens are justly entitled.

The elimination of the presumption of double profits from a section of high finance in New York in 1907 by American business men has already shown the importance of applying the same remedies to railroads, banking and business, and the questions for serious consideration, then, are as follows:

1. Recognizing that while one hundred per cent of business will always be doing, and that there is not two hundred per cent to divide with anybody, as radicals and high financiers would make the public believe, proper laws and measures should be enacted and adopted to secure the people in the full rewards of their industry.

2. Elimination of all double profits, unjust profits from money, combined with unreasonable profits from business.

3. The building up of foreign trade by reciprocity treaties, and the recognition of the fact that the deepening of the interests of the people in this business will bring full rewards to all.

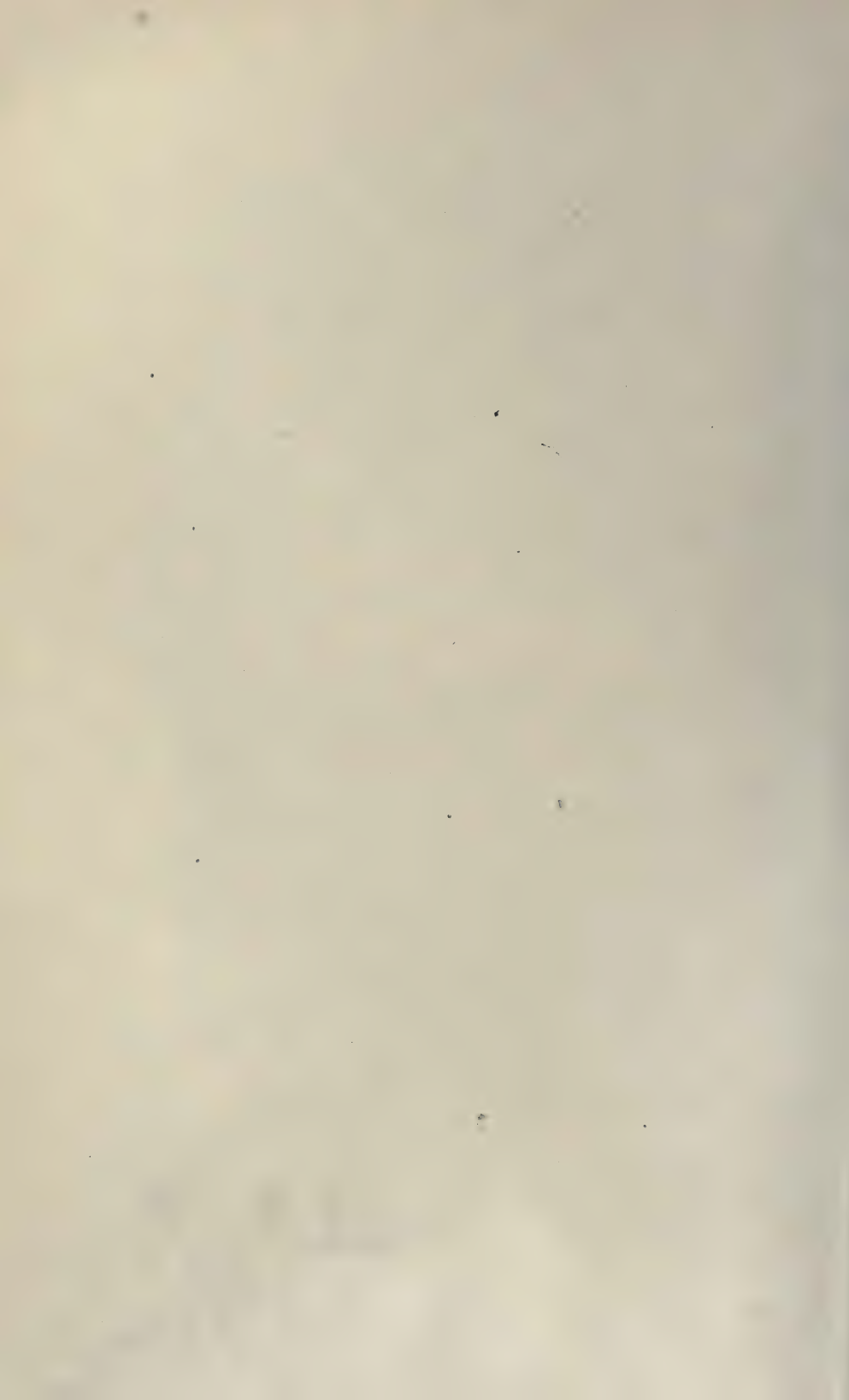
4. This is the time to do it and without further unnecessary delay.

MR. F. S. UNDERHILL, PHILADELPHIA: Because the hour is so late, I do not believe I will take five minutes. I received a communication from Mr. Rowe, offering ten minutes in this discussion.

I am a representative of the lumbermen. There has been a great cry about a lumber trust. I shall not attempt to discuss it at this late hour, any more than to say that after a great deal of endeavor on the part of those who sought to locate a lumber trust, they failed to find such a trust among the manufacturers, or among the wholesale distributors of lumber. Eventually, however, in their eagerness to find something of that nature they landed upon an organization of retail dealers located along the eastern seaboard, known as the Eastern States Retail Lumber Dealer's Association, whose members do not do one per cent of the lumber business of the country and proclaimed them as a "trust of power;" and all that could be said of these people was that they believed there was such a thing as ethics even in the lumber trade.

There never was, in the sense of the Sherman Act, or in any way that has ever been fairly demonstrated, a lumber trust. There never could be a lumber trust. There is more competition to-day among lumbermen, manufacturers, wholesalers and retailers, I

imagine, than in any other commodity marketed in the country; and if there ever comes a time when any of the men who are in the lumber business attempt to organize a monopoly or trust, there are enough farmers owning timbered wood lots, and enough saw-mill manufacturers to produce portable saw mills to enable them to put any such trust out of business in a few months.



PART SIX

*The Elements of a Constructive National
Policy with Reference to Indus-
trial Combinations*

THE ADMINISTRATION'S THEORY OF A CONSTRUCTIVE POLICY CONCERNING COMBINATIONS

I. ADDRESS BY PRESIDENT TAFT.

LADIES AND GENTLEMEN: I understand generally that this is a discussion of the question of the legality and illegality of industrial combinations, and that it involves incidentally the question of the enforcement of the anti-trust law of the United States, and the anti-trust laws of the states. I have been engaged for twenty years in construing the anti-trust law of the United States, and I think I know what it means. I have been told that the business people of the community do not know. I have observed that those who are not in the particular industrial combination that violates the law, but who are in competition with it, understand exactly the application of the law to that industrial combination.

I believe that the law has been explained by the Supreme Court of the United States in such a way that most business men can understand it, if they desire to. I recognize the fact that it renders unlawful, combinations and agreements which before its passage were regarded as proper avenues of business enterprise, and that it is very difficult to secure conviction of any person for violation of that law by a jury when it is supposed that the conviction is going to send men to prison. I am in favor of the enforcement of the law, but I believe in enforcing it in the way which is best adapted to secure compliance with it. I think it ought to be done by equitable proceedings directed toward the transaction itself, until the public and the business men are educated up to understanding what it is. I think that we must retain the law, my friends. I do not think we can permit the gathering together of these great industrial combinations that are illegal, merely by a desire to secure a reduction in the cost of production. Up to a certain point, it is true that the accumulation of plant will reduce the cost of production, but beyond that when you lose the benefit of the personal equation of the manager,

and when you enlarge the plant so that it covers the country, you increase the expense of the production rather than reduce it; and the accumulation after that, therefore, is not for the purpose of reducing the cost of production, but it is for the purpose of controlling the business and controlling prices.

Now I am not in favor of persecution or running amuck among the businesses of the country. That is not the policy of the government, but it is to treat that law as any other law, and enforce it so long as from legitimate sources of our information we find violations of it, and so long as the law is on the statute book we propose to continue that policy; but we are not engaged in trying to strike down the business of this country. Where combinations of this sort show themselves willing to come within the law, the attorney-general is only too willing to enter a decree by consent, if need be, enforcing the law and dividing up the great combinations into lesser combinations.

The operation of the Tobacco Company and the Standard Oil decrees are pointed to as an indication that they are ineffective. Nobody can say that. They are great combinations, the division of which and the effect of the division of which you can not understand until two or three years have passed. The increase in the value of the stock is doubtless due to the competition—in the desire to secure control of one company or the other, and until two or three years have passed, you can not speak of the effectiveness of the decrees of the Supreme Court. My own judgment is that a decree entered as this is, with a continuing injunction, is the most effective method of enforcing the competition or the motive for competition that is needed to break up the control of prices. It is a serious problem, and I do not speak with confidence or certainty. I only speak with the judgment that I have formed from a study of the law and an observation of its effect that a judicial experience of eight or ten years and an executive experience of three or four have given me. We can not afford to be under the absolute control of a few men in business, any more than we can in any other branch of life, and we must take such steps as are necessary to protect ourselves against control.

There are some funny things in politics and in government, and some opportunity, if you have a sense of humor, to enjoy looking into human nature as it is. The fact is if you did not have a sense

of humor in carrying on an office like that of President of the United States, you would get so many jolts that it would use up all your nervous system.

Now, you remember in 1904 and 1908—I remember because I was in the campaign in those years—that we were calling out, and both sides were calling out, and there was a terrific noise about the enforcement of the anti-trust law, and everybody that was said to be progressive was bloody about the enforcement of that law. Well, I got a lawyer who I thought knew how to organize a business office, and made him attorney-general, and he got lawyers about him who were organized for the purpose of carrying on litigation in courts, and not for the purpose of running headlines in newspapers. We went ahead and began to enforce the anti-trust law against every combination that was brought properly to our attention. It was not very long before I met those same progressive gentlemen who were engaged in demanding the enforcement of the anti-trust law coming the other way and saying, “Here, you are interfering with business, you have no thought to the benefit of the public.” Well, it just took my breath away. Nothing had been done with the law—it still remained on the statute book. It was there for enforcement under the oath that I had taken as President of the United States, and yet I was greeted from every part of the country with the statement, “You are destroying business.” I was merely trying to carry out the promise I made in the last campaign, and the oath I had taken. The operation was misunderstood. It was supposed to be very much more destructive than it really was. Business men who never had violated the law were not quite certain whether they had or not, and they became frightened, and there was a kind of panic, and I found myself in that situation which, had I not thought it comic, I would regard as very serious.

We can supplement this statute. We can supplement it by an incorporation act that shall bring close supervision to these great industrial enterprises, that shall provide for the punishment of their officers when the law is violated, just as the officers of the national banks are punished, so that stockholders if they are not themselves guilty, need not be made to suffer. We can make a law which shall give to legitimate business that shall come within the supervision of the United States government, that protection that will make all

business possible and easy and legitimate, and I hope will secure the prosperity that legitimate business is entitled to.

I have not had the benefit of what has gone before, and if I have said anything that was an absolute contradiction of what anybody else said, I apologize to him, but I do not take back the proposition.

THE ADMINISTRATION'S THEORY OF A CONSTRUCTIVE POLICY CONCERNING COMBINATIONS

II. ADDRESS BY GEORGE W. WICKERSHAM, Attorney-General of the United States.

I have been asked to give you in a ten or fifteen minutes' informal talk, my ideas of the topic of the evening, "The Elements of a Constructive National Policy with Reference to Combinations." Now the last two decisions of the Supreme Court of the United States upon the Sherman anti-trust law have resulted in a rather confused and somewhat paradoxical state of public opinion. Two schools of interpretation of that act had grown up, one which would have given to it a meaning that would have made it an absolutely unenforceable law, by rendering illegal every contract which in any degree tended to interfere with competition, and another, which gave to it a reasonable interpretation by making illegal only those contracts and so on, which directly and materially and unduly restrained the ordinary flow of commerce among the states. The Supreme Court, in the last two decisions gave to the act the latter interpretation. One would not have thought that that result would have been received with great satisfaction on the part of the great body of business men who are not concerned in great monopolies, not interested in maintaining unfair competition, but desirous of being protected from the unfair competition of their wealthier and more fortunate neighbors, and not desirous of having all corporate effort of every kind put under the ban of the law; and yet there arose immediately after these decisions two currents of criticism. One maintained that the law had been emasculated and was no longer of any consequence and no longer a possible instrument to effect the ends had in view by those wise men who framed it. Another rather steadily disseminated through the community the thought that after all these decisions left the law so that it would operate to make every kind of co-operative undertaking in business illegal, and that every corporation, every association, still remained in terror of the law, and every business man went to his office, so to speak, with a halter

round his neck. But as a matter of fact, the Standard Oil Combination had to be divided up into thirty or more separate distinct companies, and the Supreme Court sent back to the Circuit Court the great tobacco combination to be so divided by that court as to end the monopoly which it had up to that time enjoyed. And the question then arose, "Is it possible to break up a great combination of business like this, without bringing ruin and destruction to a vast, widely extended business?" With infinite pains there was worked out a solution to that problem, and that great aggregation of capital and industry was divided up into fourteen separate and distinct companies, each one large, well organized, well equipped; not one of them having a large enough amount of the business to constitute a menace to the community, each one fitted to compete with every other,—because if they were not all strong, competition would soon have ended in a renewal of the old monopoly.

Well, again there were two schools of criticism. There were those who were disappointed because, as with the wave of a wand, conditions that had existed twenty years ago were not restored. Of course, it was impossible that should be. These things have grown up through years. They cannot be torn asunder and the conditions which had existed two decades ago reinstituted in all their original vitality. But the first fruits of that disintegration have already been made apparent in Kentucky, where during the last two or three months they have had a competition in the purchase and sale of tobacco leaf greater than has been known in years before, because instead of there being one buyer fixing the price he would pay, there was active competition between eight or ten large, competitive, well-equipped buyers. Then, of course, there were the critics who regretted greatly that the national administration should have succeeded in working out a problem of this character without the embarrassment which would have attended upon a ruin of vast interests and the destruction of great business, and then in the third place, there were those who hoped for ruin, who were not content with seeing the companies divided up into separate parts, each equipped to carry on its own part of the business in competition with others, but who wanted to see a widespread destruction which would have resulted from any other kind of disintegration. All these people were disappointed. The plan adopted was the first step in a sound, constructive national policy. It showed that the Sherman law was

adequate to reach the greatest evil against which it was directed, to take the vast organizations which had acquired such wealth, such a control of the business as to become powers menacing the stability of free institutions, and to resolve them into smaller elements from which no such fear need be apprehended. The same principle has been applied since, is being applied now, and will, I believe, result in working out satisfactory results in its application to these great aggregations which in the past have brought so much trouble to the minds of lovers of their country, and will make it possible to carry on these great businesses in a way which is essential to the welfare of a great commercial people, without at the same time exposing them to the dangers which have in the past seemed at times to be overpowering.

But the Sherman law also applies to some things besides monopoly. It was directed also against all contracts, combinations and conspiracies that unduly impose an unfair restraint upon commerce and business. Until a few years ago, until, to a large extent, a very recent date, there was in every line of business to be found some kind of association or body or contract between the various concerns dealing in that line of business, which sought to control the amount of business each of the members might do, the prices which each one might charge, the way in which each might do his business, and which were directed to the exclusion of other people from coming in and competing in that business. They were almost always unfairly managed, and almost without exception, if you could get the history of these organizations, you would find that they were unfairly managed to the people who took part in them, and were always unfair to the outside public. Now, many of them have been broken up, some of them are defendants in suits by the government to-day. All of them are illegal, but some of them still persist. I had a letter, a day or two ago, from a merchant in a western state, who told me that, desirous of buying a large amount of a certain commodity in his business, he wrote to ten producers, manufacturers, asking for bids. He got two replies. The representative of one of those who bid came in to see him, and was very insistent about taking his order. The merchant said, "I can't decide now because I have written to a number of other manufacturers and am waiting to hear from them." Whereupon his visitor took out of his pocket six or seven of the letters the merchant had written to

the other producers, and said, "My dear sir, don't fool yourself, If you want that product, you will buy from me." Now that was an actual occurrence. All of those people he had written to were supposed to be independent manufacturers with no connection with each other. Obviously, they had some kind of an organization, or some kind of understanding among themselves to stifle competition, and to compel a man who was buying that product to buy in the way they agreed, and under the compulsion that their association imposed. Of course it was illegal; of course they knew it was illegal; of course it was unfair to the buyer; and it probably was unfair to all except one or two of the stronger of those who were in the association. Now that is one of the things against which the Sherman law was directed, and against which a sound, constructive national policy must protest and must proceed. The Sherman law only applied to that sort of thing, in interstate commerce, laws as old as the hills; because such things were always illegal in every English speaking country. .

But there is another phase of this subject. We have been singularly slow,* in this country, in legislating intelligently with respect to the most important of all business associations or corporations. The national government has left the subject to the states; the states have dealt carelessly and unintelligently with the subject in almost every instance. One-half, I think it is safe to say, and often a larger percentage, of all the trouble that has arisen with respect to the control over industry, the unfair control by combinations, has grown out of the lax laws relating to the organization of corporations in the different states of the United States, and out of the fact that while the national government has plenary power over interstate commerce under the constitution, and the Supreme Court has given broader and broader interpretation to that power, yet in dealing with the most vital of all questions of interstate commerce, the national government has only legislated negatively and restrictively. Now two schools of thought obtain with respect to that subject. President Taft as the leader of the national progressive school of thought has advocated the passage of a national incorporation act, under which there may be formed, subject to one set of regulations, corporations adequate to the conduct of great business, and yet so safeguarded and protected in that organization and conduct, as to make it impossible for them to become vehicles of fraud on the

public, or of the attainment of undue control and monopoly. There is much opposition to that suggestion. It is true the national government has created a national law for the formation of banks, under strict supervision, which has worked so well that, relatively speaking, bank stocks command a higher price than any other stocks in the community. It is true that congress did create a few corporations for the construction and operation of railroads, but later abandoned that policy; and a great many thoughtful and intelligent people dread the centralization of power in the national government which would result from the establishment of a system of national incorporation.

Then there are some states like our sister across the river, who derive a large revenue from this important enterprise of creating corporations, and those states, like all who derive a large revenue from an established industry, discover a singular unwillingness to give it up. And so these two forces, first the force which always presses against a new thing, then the forces which derive their strength from established revenue, which would be affected by the proposed change; and a third force, namely, the dread of centralization, rooted in the old states' rights idea,—all combine to prevent any progress being made along this line of formative, constructive national legislation by providing for the organization and conduct of corporations. Well then, another way of dealing with the subject is suggested, and that is by legislating, negatively again, using this great power to regulate interstate commerce by saying such commerce shall be only conducted by certain organizations that possess particular qualifications. It is suggested that congress enact a law providing that on and after a certain date no corporation shall carry on business among the states unless it is organized under a law and under a charter which contains certain specified things. The foremost bill embodying that idea that I know of, and indeed the most intelligently prepared measure expressive of the negative principle of regulation is the bill introduced into the senate by Senator John Sharp Williams of Mississippi. Probably, as far as future organizations go, such a measure would be very effective. My fear about it is that to say that after we have gone on for years under a system allowing the states to create corporations, provide the law of their being, and authorize them to do all sorts of things, the federal government following a perfectly *laissez faire* policy,

and after millions of money have been invested in faith of that kind of government, a law that provided that unless on or before a certain day no interstate commerce should be carried on by any corporation unless organized in a way specified, would be impossible of being carried out and would lead to great confusion, and loss.

Then too, I do not believe in dealing with the subject in a negative way. I believe that power carries with it responsibility; that the national government, possessing what has been declared a plenary power, exclusive of any other power, over this subject, having exercised that power by saying that thou shalt not, should face the responsibility and say what thou canst; and that until the congress of the United States approaches the subject in that way, no solution can be found for this fundamental problem in connection with the conduct of business and the application of the law to combinations and to competition. I say, until congress approaches that subject in that formative, constructive way, I do not believe the problem can be solved. As it seems to me, the three elements of a constructive national policy are, first, the enforcement of the Sherman law in its application to the great combinations which threaten or have threatened monopoly, by resolving them into elements, no one of which shall be large enough to be a public menace. Second, the application of the Sherman law to the destruction of all agreements between independent manufacturers or factors in interstate business which unduly and unjustly interfere with the free flow of commerce among the states. And, third, in the enactment of some sound, sane, intelligently conceived national law for the creation of corporations, for the conduct of business among the states and with foreign countries.

Now this is a vast subject, a subject that directly or indirectly touches every citizen. It is one upon which no one can have any patent nostrum; it is one upon which every intelligent man should have some thought; it is one that must be solved by the comparison of facts and by threshing them out in that great crucible in which English speaking people have always progressed, namely discussion, public and private, resulting finally in legislation which shall be the expression of the best thought of the most intelligent portion of the community. Therefore I welcome the opportunity to come here and meet a body of earnest men and women, interested in this sub-

ject, to contribute my mite towards the discussion, a contribution that I make with considerable diffidence, because it has been my duty to administer and apply the existing law, not always to the intense satisfaction of those against whom it was applied, but always with the earnest desire to apply it where the mandate of congress had said it should be applied.

CORPORATE REGULATION—AN ADMINISTRATIVE OFFICE

BY HERBERT KNOX SMITH,
Commissioner of Corporations, Washington.

We can take the years 1887, when the Interstate Commerce Commission was first established, and 1890, when the Sherman act was passed, as the beginning of our present policy, or lack of policy, on the corporate problem. One negative fact stands first. Although more than twenty years have elapsed, we have substantially failed to establish any constructive policy as to industrial corporations. The Sherman Anti-Trust Law represents, with one exception, which I shall mention later, that entire policy. That law is, of course, not constructive. Its primary object is the prevention of monopoly and of certain kinds of combination. It is enforced entirely by judicial procedure, partly under the strict and narrow forms of criminal law.

The remarkable corporate concentration that has taken place in these twenty years has, of course, had good as well as bad results. Otherwise it could not have reached its present dimensions. But thus far our non-constructive policy has in the main failed to segregate the good from the evil. It has simply attacked the evil by attacking the whole process, without any attempt to separate and preserve the good.

It is not necessary to enlarge on the absurdity of attempting to regulate modern industrial corporations exclusively through the courts. The court is a means of settling a specific question, usually of private property right. It acts only on particular cases; it is subject to highly specialized procedure; its methods are necessarily slow; its training is legal, and it applies legal, not economic or financial, principles. Finally, its processes are in most cases remedial after the act, and not preventive before the act.

This striking gap in our public policy as to industrial corporations almost bespeaks its own remedy. What we must have is a federal administrative office supervising industrial corporations, analogous in some degree to the Interstate Commerce Commission which deals with railroads. The machinery of modern business is excessively

complex. To cope with the changing problems raised by it requires an organization which shall be permanent, flexible, composed of trained experts, having available the accumulated knowledge of continuous service and investigation, capable of co-operation, of prevention as well as cure, and, above all, furnishing effective publicity. Only administrative action can secure such results.

Thus far I have stated theory. I now propose to describe a concrete "experiment in statescraft," a piece of laboratory work upon which I base my theory, and with which I am familiar, by eight years of personal association. I have already said that there was one exception in our lack of constructive legislation on industrial corporations. That exception is the Bureau of Corporations, and it is the "experiment" whose results I propose to outline. It was organized in 1903. Its sole powers are the investigation of industrial corporations engaged in interstate commerce and the reporting of the results to the President, through whom they are made public. It has no power to enforce the Sherman law, or to direct the course of business, or to issue orders, or to grant redress. It is solely an educational and publicity agency.

The Bureau takes up certain specific staple industries or great corporations; assembles, from all over the country, the multitudinous facts that go to make up their business history; examines them by the most exhaustive investigation, much as the scientist studies an organism under the microscope; digests those facts into logical, impartial and clear reports, and makes those reports public.

Its organization corresponds to its work. Apart from certain clerical and purely administrative divisions, the 125 men in the Bureau are divided according to the investigations then pending. For example, at present there is a steel division, lumber division, waterways division, international harvester division, tobacco division, etc. At the head of each of these divisions is a man of high rank, an economist of excellent academic training, and usually also with a long subordinate experience in the Bureau. Under him are assistant economists, statisticians, accountants, field men, and, if needed, attorneys. He is responsible for outlining the scope of the investigation, assembling the facts, and writing the report so that it shall show not only the facts but the significant permanent tendencies and conclusions. He consults the commissioner continually during the process. The commissioner then revises this report

with the utmost care, concerning himself especially with the soundness of the conclusions reached and the effectiveness of their presentation.

I have said that the Bureau is primarily an agency of publicity. It is more than that; it is the agency of efficient publicity. We recognize thoroughly that the "man in the street" will not read 300-page reports. Our work, however, depends on that man, because he represents public opinion, and public opinion is the great force that we are trying to direct intelligently on modern business problems. Therefore, when any report is published, the essential facts and conclusions are digested into not over two thousand five hundred words, or about two columns of newspaper. It must be in such shape that the papers will print it as news and the citizen will read and understand it. This digest is sent out through the press associations, under "release," so that it is published on a given day all over the country. The result is that while possibly two thousand people, mostly technical experts or economists, will read the whole report, several millions will at least see the headlines of the digest, and a large proportion of them will get the essential facts. The great facts of business thus reach the citizen and voter in available form.

Now for the results. We have found that public opinion, thus intelligently applied, when based on concrete facts, is the most effective reforming force against industrial evils. The Bureau published a report in 1906 setting out a great system of railway rebates and discriminations enjoyed by the Standard Oil Company, every fact being verified from railroad records. Within six months of that publication the railroads concerned cancelled every rate criticised as illegal in that report, and the railroad map was wiped cleaner of rebates than it ever has been in the last generation. In 1908 and 1909 the Bureau published a report criticising sharply certain methods of the two great cotton exchanges, New Orleans and New York. The New Orleans Exchange at once entered into co-operation with the Bureau, and, after conference, voluntarily adopted certain very important improvements in its methods. The New York Cotton Exchange, after two years, has been forced into considerable, though by no means complete, compliance with the recommendations of the report. You will observe that here the federal government had absolutely no control over these intrastate organizations. The operative force was simply publicity and co-operation.

Two reports have been issued by the Bureau on the "Tobacco Industry," and produced important reforms in competitive methods in the industry, testified to by many of the independent tobacco concerns. The Bureau has published three reports on "Transportation by Water." The one dealing with water terminals has especially had a very marked effect both on public opinion and in local controversies on this subject. It was used as a campaign document in establishing the Port Commission of Seattle, Washington, which is aimed at a modern organization of that port, and it has been referred to by the courts as authoritative in setting forth certain principles of relationship between waterways and water terminals. The Bureau has published three reports on "Taxation of Corporations by the States," which have been widely used by state officials and by the special sessions of at least two state legislatures, called for the revising of state systems of taxation. In one state, whose taxation system was criticised in these reports, the special session of that legislature has made a complete revision of its taxation laws with express reference to the Bureau's report. The Bureau has also published two reports on the "Steel Industry." These have been followed by very tangible results, notably the cancellation by the United States Steel Corporation of its "Hill" ore lease, and the reduction of rates on its northern ore roads, both of which were the subject of especial criticism in the reports. Finally, in the proposed voluntary dissolution of the International Harvester Company, negotiations for which are now pending before the Department of Justice, the Bureau has been called upon largely by that department for information on the business facts and economic tendencies in that great industry, without which data no complete and effective dissolution could be worked out.

You will observe that these results have been accomplished by administrative action, by efficient publicity, through a trained force of specialists, whose permanent and continuous work is the handling of business facts and business problems.

Quod erat demonstrandum. In other words, it is submitted that this "experiment in statecraft" has justified, in actual practice, the principles that I first laid down in theory. The gap in our public policy must be filled in some such manner. If we are going to handle satisfactorily the vital problems of our day, which are economic, and which deal with the enormously complex, immediate, and

changing conditions of business machinery, we must have some permanent federal office, formed along the lines of the Bureau of Corporations, with considerable extension of its present scope and power. It must be organized for continuous consideration of these business problems, must have complete access to corporate records, receive constant reports from important corporations, and be charged with the duty of making public the essential facts thus ascertained. Consider what this will mean. It will mean the creation of a force of trained specialists, whose life work is to acquire and analyze impartial and accurate knowledge of this most difficult subject; the accumulation, in one reservoir, of the vast masses of business facts that constitute our problem, and the establishment through the years of advancing precedents and traditions of business standards and financial relationships. Again, such a system can be made the basis for such positive regulation of corporations as later may appear desirable.

There are now, broadly speaking, two schools of thought on the question of corporate regulation. One prefers to rely mainly on competition, and depends largely on the enforcement of anti-trust legislation. The other prefers to permit combination, and to regulate its operation by direct government intervention. For either of these two ideas the plan for an administrative office above outlined is immediately desirable and necessary, while it does not commit us finally to either policy.

Finally, and most important of all, such an administrative system provides for the education of the American public in the problems that they must collectively solve. Our experiment in a national democracy frankly depends on the education of the citizen, from the little red school-house up, his education for collective action toward a national end. We have no other salvation. It is a slow process; it has to be done from the ground up; its results do not appear day by day or year by year; but there is no substitute for it, and no quick panacea that can take its place. And this can be gotten, and can be gotten only through some such national administrative system as I have outlined.

REVIEW AND CRITICISM OF ANTI-TRUST LEGISLATION

ADDRESS BY FRANCIS G. NEWLANDS,
United States Senator from Nevada.

MR. CHAIRMAN, LADIES AND GENTLEMEN: I must confess that when I entered this large hall I was a victim of surprise. I had been invited to attend a meeting of the American Academy of Economists, and I supposed that I was to share in a conference upon this important subject with gray-haired and hard-visaged economists. You can imagine, therefore, my astonishment when I was ushered into this large auditorium, graced as it is by the presence of the ladies. However, the ladies are rapidly becoming statesmen, and we politicians, who are struggling to become statesmen, must take them into account. And so, though I must confess I would prefer a lighter subject, I will commence my remarks, trusting that, though dry, they will be instructive.

I am a member of the Senate Committee on Interstate Commerce, and some months ago we entered, under a resolution of the Senate, upon a consideration of the question as to whether further legislation regarding the regulation of interstate commerce was necessary or desirable and we have been having continuous sessions ever since. Lawyers, publicists, economists and business men of distinction have appeared before us and we have collected some three thousand pages of hearings upon this question. I must confess that as we advanced in the inquiry the members of the committee have become more and more confused as to what they should do. The matter seemed very simple at the start; it seems very difficult and complex now. And I must say that since the hearings have been closed, the discussions of the committee have not tended towards harmony of action. This trust question has been presented to us in various shapes. Some insist upon national incorporation, some insist that we should amend the Sherman anti-trust law by defining in the statute what the term reasonable or unreasonable, as used by the Supreme Court means, that we should by the statute declare certain presumptions, and that we should, by statute, declare certain

evidence to be conclusive evidence of a conspiracy in restraint of trade. We have also had suggestions that we should, by legislation, prescribe the conditions under which state corporations should engage in interstate trade, and we have suggestions that we should go so far as to prevent state corporations engaged in interstate trade from continuing to engage in such trade, unless the laws of the states under which they are organized are changed in such a way as to conform to the national conditions, thus establishing by national legislation, the reform of the state incorporation laws, and producing harmony of legislation so far as the states are concerned throughout the union.

Now, with reference to national incorporation, advocated so ably by the President and the Attorney-General and by the Secretary of Commerce and Labor, I have to say, that, though a democrat, I have not looked with hostile eyes upon legislation of that character, but I was disposed to confine it entirely to corporations engaged in transportation between the states. I thought that it was necessary, in a broad and general way, to facilitate the organization of these great systems of railways extending from ocean to ocean and from the lakes to the gulf, with their various branches, under a national incorporation act, and I had the temerity to introduce a bill upon that subject some years ago. I was never prepared to extend national incorporation to the great trading and industrial organizations of the country, because as almost all corporations engage in both state and interstate commerce, I feared that the nation would absorb the entire function of creating corporations. But even with that limited bill I had little success. I found it opposed by conservative republicans who believed in the large exercise of the federal powers, but who perhaps felt that the nation acting collectively upon these great organizations might secure a more efficient control over them than under the divided sovereignty under which they now rest. And so far as the democrats are concerned, I found that their disposition to restrict the powers and functions of the national government, as contrasted with the powers and functions of the states, prevented them from considering even so desirable legislation, the economic benefit of which all must concede. I found that they were jealous of the exercise of national powers, particularly in the southern states, that they wished the corporations to be state corporations, in order that their police powers should have full control. I found the Jim

Crow cars no inconsiderable factors in the determination of this question. For the people of the southern states are adjusting this race question according to their own views, and they fear that if the railway corporations shall be organized under national charters there may be an attempt to enforce some degree of equality in social life, as between the two races. So I came to the conclusion that even with reference to so desirable a thing as nationalizing our great transportation lines, national incorporation would, for the time being, be a difficult accomplishment. That difficulty of course increases when you propose to extend it to commercial corporations, particularly in view of the fact that the democratic party whose traditions are opposed to it has been gaining in power and strength in Congress, and has now secured the control of the lower house, and is rapidly approaching the control of the upper house. Courtesy prevents me from indulging in any prognostications as to the executive office. So I feel that whatever may be said from the economic point of view regarding national incorporation, it must drift out of consideration as a present problem that is capable of approximately near accomplishment.

Most of the witnesses who appeared before us, I may say nine-tenths of them, insisted that the Sherman anti-trust law should not be changed. A few, as I have already stated, believed in supplemental legislation, defining, raising presumptions, giving conclusive effect to certain proofs. Legislation of this kind has been urged by Senator LaFollette, and most ably presented by Mr. Brandeis, of Boston. I do not think, however, that there is any prospect of any alteration in the near future of the terms of the Sherman anti-trust law, nor do I believe that any legislation of a supplementary character will be indulged in. The legislation of the future will be legislation prescribing the conditions upon which state corporations may engage in interstate trade.

Among these bills is the one referred to by the Attorney-General, the bill of John Sharp Williams, the gifted Senator from Mississippi. I must say that, coming as that did from our states' right democrat, it is a gratifying proof of the growth of the view that a larger exercise of national powers is necessary in order to meet this great economic question; for I must say, when Mr. Williams appeared before us and presented his able argument in favor of this bill I was amazed, for it not only fixed the conditions upon which state corporations should

engage in interstate trade, but he provided in his bill that no state corporation should engage in interstate trade unless the state law under which it was organized complied with the conditions of the national legislation which he was urging, conditions which would bar holding companies, bar interlocking directors, bar all corporations organized under the loose modern legislation of the states, and which would entirely revolutionize such legislation. I was pleased, however, with this, as an indication of the growth of the view that national powers should be more extensively exercised, because I recalled that some years ago, at the great Memphis waterways conference, at which you will recollect President Roosevelt made so dramatic an appearance, I was called upon to speak regarding my favorite theme at that time, the national incorporation of great railway and water lines with a view to promoting interstate and foreign commerce, and that Mr. Williams sat some few seats from me, and that as I advanced with my views, a sad melancholy came over his face, and that he sat there during my entire speech shaking his head profoundly in dissent. I thought it was a very gratifying evidence of a gradual liberalizing of views upon the subject, among my democratic friends from the south, that this leading democrat should present a bill of so national a character which has appealed so to the judgment of the Attorney-General. But a surprise met me upon this question in the Committee on Interstate Commerce, and I feel as though I were giving away some secrets of the executive session. I found that whilst the democrats were advancing in their willingness to assert and exercise national powers, some of my republican friends on the committee were disposed to retreat, and I heard several of them declare that they could never go so far in invasion of the functions and powers of the state as Mr. Williams was willing to do. So you see the difficulties of the politicians struggling to be statesmen. Ladies, beware!

Then we had another bill before us, Mr. Cummins' bill, Senator Cummins of Iowa, a bill in which he prescribes the conditions upon which state corporations shall engage in interstate commerce, prohibiting, as Mr. Williams' bill does, many existing practices, such as the holding company, interlocking directors, and also reaching out for the question of size in corporations; for whilst many contend that mere size itself does not constitute restraint of trade, we all know that when a giant is walking amongst pygmies, the pygmies do not

assert themselves with very much valor. And so, insisting that mere size itself may become a menace to interstate trade and destructive of competition, Senator Cummins in his bill, tries to reach that in effect by a commission, which, under rules fixed by the bill, will determine whether a corporation is sufficiently big in its capital or sufficiently big in its operations, to constitute a menace to the commercial life of the country.

Last, but I should like to say not least, is the measure which I introduced, the first bill, I believe, introduced upon this subject, immediately after the decision of the Supreme Court in the Standard Oil case, acting upon a contention which I have made for years ineffectively upon the floor of Congress, but which is now gradually gaining an audience, that we should create a great interstate trade commission, with powers over interstate commerce similar to those possessed by the Interstate Commerce Commission over interstate transportation, without the power, I may say parenthetically, to fix prices, as my friend Gary and my friend Perkins would like us to do. That bill proposes that we should merge the Bureau of Corporations into a great interstate trade commission, similar to the Interstate Commerce Commission, of which commission the chief of the Bureau of Corporations shall be a member, and that the entire staff and powers and functions of the Bureau of Corporations shall be transferred to that commission, thus by a process of evolution, gradually expanding the operations of the Bureau of Corporations, turning it from a mere bureau of investigation, reporting to the President, into a great administrative and corrective tribunal, with powers of publicity, with powers of investigation, with powers of correction and with powers of recommendation to Congress as to new legislation; and also with the power to aid the courts in carrying into effect their decrees for the disintegration of existing trusts, and their reorganization into less objectionable forms; and also providing that corporations may of their own motion appear before this commission, and after presenting fully the form of organization, the methods of doing business, submit to the judgment of the tribunal as to whether their organization contravenes the Sherman anti-trust law, and then correct their organization and their practices pursuant to the determination of the commission. I felt that if this bill should pass, we should have, not a revolutionary readjustment of the industries of the country, but a gradual readjustment to the Sherman law and to

other laws which might hereafter be passed, that instead of exercising the punitive powers of the government over the officers of these corporations which had been built up in the period of thirty years under conflicting views of the meaning of the act, we could, by a process of gradual correction in the courts and gradual correction in this administrative tribunal itself, build up a great body of administrative law regarding corporations and industrial and commercial operations, such as has been built up by the Interstate Commerce Commission regarding interstate transportation. For years I have contended that if, at the time the anti-trust law was passed, the passage being almost contemporaneous with that of the Interstate Commerce Act regarding railroads, we had organized an interstate trade commission similar to the Interstate Commerce Commission, the action of that commission would have prevented many of those abuses which have since grown up and that gradually we would have evolved a system of commercial law through administrative processes as perfect as that which has been built up regarding our system of transportation. To-day, as a result of the splendid work done by the Interstate Commerce Commission, a work regarded at the start with distrust and met by the opposition of the great railway interests of the country, we have reached a condition of things where the railroads are practically out of politics and the administration of the law by that great tribunal, a free and independent tribunal, not subject to the imputation of politics, not subject to executive interference, has resulted in satisfying the just expectations of the people, and has won the confidence of the railway managers themselves. I was a member of the Interstate Commerce Committee when we were considering many important changes, enlarging the powers of that commission from time to time; and upon every occasion we were met by the melancholy foreboding of the railway managers who predicted the destruction of railway interests and the prostration of the entire system of transportation; and yet only recently these very railway managers have appeared before our committee and have declared that upon the whole, the changes that had been made have been beneficial and not prejudicial to the railroad interests of the country. We want peace. We want peace in our system of transportation, and we have nearly secured it. We want peace in our great industrial system, and we are far from it. And the reason we have not peace to-day with reference to industries as we have

practically with reference to transportation, is because Congress did not, twenty years ago, give to the industries of the country the commission which was accorded to the transportation of the country.

Now, my friends, I regret to say that I find in the committee less disposition to report that bill than when our meetings commenced. I must say I have been surprised by it, for at the very start I had an informal expression from the majority, I may say nearly all the members of that committee, that they thought this idea of the creation of an interstate trade commission was excellent. I thought it ought particularly to impress the judgment of men, because we are now engaged in the evolution of economic thought upon this subject. Two rival schools, to which the Attorney-General has referred, exist, one believing in regulated combination, the other in unrestricted competition. Now that war is going on. No one can tell to-day how the people of the United States, with whom the ultimate verdict rests, are going to decide that question. Great social movements are going on throughout the world. But I fear I have trespassed too much upon your time and I will simply stop. Being so interested in my subject and so pleased with the attention of the audience, particularly of the ladies, I found myself led away, and pursued the usual habit of the Senate, which is toward discursiveness. I will simply close by saying that this commission would give an opportunity to these two contending schools of thought to fight out their battle. Meanwhile it would go along by the patient processes of investigation, publicity, correction and recommendation to build up the body of administrative law that would be serviceable whichever one of these theories ultimately prevails. The confusion of politics to-day may have something to do with the confusion of our minds in Congress regarding this important question. I trust the action of the people in the next election will be such (and I have no partisan meaning in this) as to clarify the atmosphere and clarify the minds of the statesmen, for their minds can only be clarified by a vigorous application of public opinion.

LIMITATIONS OF ANTI-TRUST LEGISLATION

BY JAMES M. BECK,
New York.

I am here to-night in the capacity of a Greek chorus. I am not so antique and I am sure not half so intelligent. The Greek chorus fulfilled its mission of commenting upon that which the chief actors had said, and whether it was the hero or the villain, it commented with breadth of view and judicial impartiality. Therefore being but a chorus and not an actor, I must be brief. There is another reason that requires brevity and also discretion in my few comments. As the chairman has said I professionally represent as its general counsel one of the big interests against which the attorney-general has directed his zealous and skilful activities. I am therefore in the position of defendant in a United States court at Philadelphia when I was district attorney. A strong case had been proved against him on a charge of selling liquor without a federal license, and his attorney, knowing that Judge Butler most despised a perjurer, counseled him not to testify but to keep off the stand. The colored man said, "All right. I 'spects I had better remain neutral." There is a third reason why I want to be brief in my remarks, and that is, as I still account myself of Philadelphia, and as a speaker, a distinguished member of congress, from another state, is to follow me, I would only postpone your pleasure and do him an injustice if I unduly prolonged my remarks, and I would be wanting in courtesy if I encroached upon the time which remains to him before the arrival of the President.

I was much impressed with the fact that each of the preceding speakers treated a different phase of the warfare of the government against modern methods of doing business, and that each gave some testimony as to the practical results of his especial line of work. The attorney-general, on the one hand, spoke of the great legal department of the government, spoke, not only for himself in the successful work which he has done as attorney-general, but in a sense for all his predecessors in that high office since the enactment of the Sherman law. And the only tangible result of the enforce-

ment of the Sherman law to which he called attention, was of some competition in Kentucky, in the sale of leaf tobacco, and the fact that the stockholders of Standard Oil had some thirty-six instead of one certificate of shares for their property holdings in that most efficient business organization. Now that there has been or will be any radical change in the underlying conditions of any industry, by reason of any activity of the government under the Sherman law, I do not believe. This attempted enforcement of the law represents a part of possibly an irrepressible conflict between the man and the state, and just as in past ages by many centuries of sacrifice it was demonstrated that the most powerful government cannot crush the religious opinions of men, so I believe that, whether it takes years or decades, sooner or later the people will realize that the vast economic forces of our country representing the interplay of a hundred complex tendencies, all stimulated and invigorated by the agencies of steam and electricity, cannot be held in by any legislative straight-jacket or bureaucratic supervision. The second speaker, Senator Newlands, spoke for the legislative branch of the government, and he told us how for many months distinguished men appeared before the Committee on Interstate Commerce, and gave the best of their efforts to amendatory legislation of the Sherman law, and he admits that all has ended in empty discussion. You will remember how when the Queen in Carroll's classic took Alice by the hand and ran with her until Alice was breathless, how Alice found she was where she was when she started, and said, "In my country when we run very fast we get somewhere." The Queen said, "Oh, well, that is true in your country, but in this country you have to run twice as fast as that to even stay where you are." All this talk about adding to the already restrictive regulations of the Sherman law will be quite as futile as Alice's journey, unless it confines itself to very specific instances of commercial wrongdoing, which are susceptible of a clear, intelligent and tangible prohibition.

And finally we come to the third speaker, the able Commissioner of Corporations, and what deeply impressed me was the fact that he showed practical results, and how had they been accomplished? Simply by the efficient dissemination of intelligence and the appeal to a force greater than courts, greater than the attorney-general, greater than congress, the dominating force in any democratic commonwealth, the force of public opinion. And so far as

the Sherman law admits of an application through executive channels I believe it will come in just such an appeal to public opinion.

From the year 1787, when our constitution was adopted, until 1887, a full century later, there never was a statute of congress attempting in any affirmative or even negative way to police these so-called channels of interstate trade. There were congressional enactments to aid in the construction of railroads, for the construction of railroads was then regarded as of a highly useful character, so much so that when the last spike was driven in the Union Pacific Railroad it was made an occasion of great rejoicing in many eastern cities. There was then no hostility against the railroads. Until 1887 there never was an attempt for a full century to enact any law to restrict or curb the commercial activities of the American people, and yet we got along very well. We grew and grew great—from three millions in 1787 to sixty odd millions in 1887. We grew to be one of the greatest nations in the world in agriculture, mining and manufacturing, and I venture to say that, in 1887, there was more general good feeling among all classes of the American people, a greater advance of prosperity, there was greater freedom for capital to make its investments and greater prosperity for labor than there has been since the government attempted, by legislative methods, to interfere with the delicate mechanism of business. Two countries illustrate two opposite poles of thought in this respect, the mother country, England, and our own country. With the exception of recent attempts to liberate and elevate those of the manual toiling class, England has adopted and still adopts the policy of *laissez faire*. Let me give you a striking illustration. Although our country has a mass of conflicting insurance legislation, do you know in what the only insurance legislation of England consists? It is simply that every insurance company shall file a report with the Board of Trade, giving the financial status of its business, and if any official makes a single false statement, the prosecuting officer sends him to jail. There is, however, no attempt to fetter the freedom of trade between the insurance companies and the public. In other words, instead of treating adults as minors, they let the individual read his contract, protect himself, and not act as an infant for whom the government should be a kind of guardian. In our country we have a conflicting mass of insurance legislation which puts the insurance company upon the level of a Chinese merchant,

who, passing through the sixty cantons of China, is obliged to pay tribute to the corrupt mandarin of each province. Nevertheless we had the great insurance scandals in this country, and some one suggested in England that they ought to abandon the policy of non-interference, and at least regulate all foreign insurance companies in England. I had the honor of appearing on behalf of the Mutual Life Insurance Company before a special committee of the House of Lords, and they concluded that the old policy of England of preventing only fraud, but otherwise allowing the companies and the individual entire freedom of contract, was the one upon which England has grown great.

I cannot, in the few moments that I have, even state my meaning, much less amplify it. I do not advocate any hard and fast doctrine of *laissez faire*. Some of our experiments in regulating business have yielded good results. The Interstate Commerce Act of 1887, to which the senator has alluded, has more than justified itself, and has given to each shipper an equal chance, and has slapped a practice under which a railroad could allot to one man prosperity and to another poverty. It is a magnificent demonstration of intelligent public action. The Sherman anti-trust law is not thus vindicated by results. Far from accomplishing its object, all the great industrial organizations, with the single exception of the Standard Oil, the distillery trust and the American Sugar Co., have grown up since the enactment of the law. I do not say the law stimulated them, I simply say the law was impotent to stop them, because it was an irresistible economic impulse to combine a number of units into a more efficient unit. Who has been injured? There has been, since the Sherman law was passed, a standing invitation in that law to any individual who felt himself aggrieved by reason of any combination, to commence a suit, and obtain, not only the uttermost penny of what he has suffered, but three dollars for every dollar of injury. I refer to the treble damage clause of the Sherman anti-trust law, and I do not believe—I think I am safe in saying it—that in the twenty-two years since the enactment of the law there have hardly been twenty-two instances in which any individual ever sued a combination under the treble damage clause. There has never been, unless it has happened while we are speaking to-night, but one instance of a jury convicting a company under the penal provisions of the Sherman anti-trust law. There is one

exception (the turpentine case), and the Supreme Court of the United States has entertained an appeal as matter of grace to determine whether the penal provisions are not so unintelligible as to be void under the organic law of the nation. You have these two facts, that only once, so far as experience shows, has a jury made criminals of men because they do what manifestly has been a great economic impulse of the closing years of the nineteenth century and the beginning of the twentieth century, and that no individual, whether he had large means or little, with the comparatively few exceptions to which I have referred, has ever taken advantage of the treble damage clause to show that he has suffered by reason of the combinations. If there was this genuine popular indignation against the trusts, so-called, I am inclined to think the courts would be full of cases of this character. A mere inspection of a manual of statistics will convince any intelligent man that there are at least one thousand corporations having some large relative percentage of control of a particular industry, against which no action has or could be brought, because if the present interpretation of the law were applied indiscriminately to every corporation within its scope, the courts would be so clogged by litigation that there would be little time in the federal courts for anything else. The Sherman law in its practical enforcement has been, notwithstanding the high purposes, the great skill, and the real effort of the various attorneys-general who have had occasion to administer it, little less than a delusion. It has accomplished practically nothing. It has not altered the underlying basis of any industry, and it never will, because you cannot compel men to compete if they do not want to compete.

If the Sherman law is to remain, then I would relieve the political department of the government from the duty of its enforcement. I know the attorney-general and I know something of the department there, and believe me, there is no more efficient machine than the federal machine, and no higher class of officials in the world than those, who, like Mr. Wickersham, put aside great material advantages to serve the country in official station. We do not half appreciate the men in Washington who on meagre salaries serve us so efficiently, and this could be said of all three of the speakers here to-night. Nevertheless, this fact is as true as human nature, that so long as the success or failure of an administration must depend for the time being upon its temporary popularity, there

will always be a sub-conscious influence, to some extent, impelling any man in power to do that which is popular and so long will there be an obvious temptation to institute these suits on the civil side of the court. They become a political asset of inestimable value, and they have proved in the past no inconsiderable factor in the re-election of an administration. To remove that pernicious mingling of politics and business I would take out of the Sherman law, just as is done in the Interstate Commerce law, any initiative on the part of the government. I would leave it to the individual who claims to have been injured, to demonstrate the truth of his allegations in a court of justice.

I would repeal the penal provisions of the Sherman law, which have been practically a dead letter, and which have accomplished nothing of value, and which could be used, as they have never yet been used, but could be used, as a real engine of oppression. I would constitute a tribunal in Washington and I would not make it wholly or largely of lawyers. This whole question has been plunged into a fathomless morass by legal terms and legal technicalities until no business man knows what a reasonable restraint of trade is. The courts do not understand it. I defy anybody to read the sixteen thousand words of the Tobacco Trust and Standard Oil decisions and form even a vague idea of what is a reasonable restraint or what is unreasonable. If the Supreme Court of the United States, after two years of deliberation and the use of sixteen thousand words cannot give a plain definition of what a business man may do or may not do, then these business men ought not to be charged with violations of law if they mistake their way in this jungle of legal terms. I would constitute this tribunal non-partisan, naming five business men and four lawyers. I would then do precisely as they do in Canada. Any person claiming that his liberty to compete is restrained should go before that tribunal and be given a summary hearing to see if there was any substantial basis for the complaint. If there is found to be, let the finding be certified to the courts and unless the corporation can show cause to the contrary, let the court issue a writ of injunction or a temporary mandamus to right the wrong that strangles competition. With respect to the real element which affects the public, namely the question of extortionate prices, I would apply, if we are going to abandon the principle of *laissez faire*, and attempt to solve this most difficult

problem by legislation, to the corporation the principle contained in what we know as *Munn vs. the State of Illinois*. In that case it is held that whenever a corporation is of such a character as to be a semi-public agency, as a public utility corporation, an electric light company, a railway, an elevator company, or a ferry, then to prevent extortion the state had the right by maximum charges to stop the quasi-governmental body from making more than a reasonable return upon its actual investment of capital. Therefore I would have this governmental tribunal upon complaint of a given number of consumers, make an investigation and if it found that the party charged did by reason of its magnitude of capital as compared with the capital of competitors or by its relative percentage in the trade or by any other circumstance, have as a fact such a control of sources of supply, or for any reason such a monopolistic control over the industry, then I would treat it as I would treat a railroad, an electric light company, or any other public utility as charged with a public use; I would find out what was its actual investment and by a maximum price give it a fair return on its investment and no more. But if it were not a monopolistic combination, then I would leave, with respect to the price of the product, free play to economic forces.

I have taken a great deal more time than I had any idea of, and I must apologize to you and to the next speaker, and I only want to say that if, in the hurry of these desultory remarks I have even seemingly said anything offensive to any other speaker, then let me say, in the words of Hamlet:

Let this disclaiming of a purpose evil
Free me so far in your most generous thoughts,
That I have shot an arrow o'er the house
And hurt my brother.

FEDERAL INCORPORATION OF INTERSTATE CORPORATIONS

BY ERNEST W. ROBERTS,
Member of Congress from Massachusetts.

As a preface to my necessarily brief discussion of the topic of the evening, I shall assume that combinations, both of men, money and allied interests, exist and are to continue as a logical and inevitable accompaniment of the vast and rapid industrial and commercial growth of our country. It is inconceivable that all combinations can be or will be broken up and the people thrown back into the slow, costly and extremely inconvenient conditions that existed before the era of consolidations. Nor should such an attempt be made until every method of control that fairly promises to correct the abuses of combinations and confine their activities within reasonable limits has been tried and found inadequate. Before presenting what I believe is at least a partial remedy for existing conditions and what seems to me may fairly be termed one of the elements of a constructive national policy with reference to combinations, let me in a few words outline the situation for which we are seeking a remedy.

In the last forty years, barely a single generation, there has been a stupendous increase in individual wealth. Before that period the man who owned a million dollars in money or its equivalent was a person of note in his community; then business was to a great extent in the control of individuals and partnerships and the amounts of money involved were comparatively small as we look at business investments to-day. Early conditions were simple, the control of business enterprises was widely distributed. There was little talk of the injury of competition. Machinery with its attendant economic complications had not reached its present high stage of development. To-day we find a complete and radical change in the situation. Never before in the history of the world have we had such tremendous accumulation of wealth in the hands of individuals, never before have such enormous sums of money been invested in the varied avenues of industry. Forty years ago business corporations were scarce and comparatively small affairs when existent.

To-day the corporation is almost as common as was the partnership in those days; and because of our highly developed means of communication and the rapid growth of the country, practically every business of any magnitude is forced to be an interstate business, where before only the greatest could engage in interstate commerce with safety and profit. The inevitable result has been that what forty years ago was a satisfactorily handled situation, both industrially and economically, has become magnified by combination and industrial development into a problem that in the minds of thinking men is the most important one with which we have to deal to-day.

When the country was developing and business was preparing to branch out into the new fields that such development promised, it was only natural that business men should turn to the corporation as a desirable means of conducting their affairs, because of its limited liability to individuals and because of the further opportunity it afforded to secure needed capital. At the outset of the increase in corporate form of conducting business the several states apparently had in mind only that sound business laws were desirable. In a short time, however, it became apparent that the corporation was to be the largest individual form of commercial development, and certain of the states, this may be said in fairness, I believe, seeing an opportunity to increase their incomes, adopted less rigid forms for incorporation and began an open bidding for fees from organizers. The unavoidable result quickly followed. The corporations increased, the laws for their regulation became less and less desirable, and certain men who produced nothing have grown rich beyond the dreams of avarice through the workings of these laws. It is not the purpose of this address to criticise nor are these statements made from that standpoint. They are merely a recital of facts which, piled one upon another, have created the problem the people are now called upon to solve.

The federal government, because of the constitution and its limitations, real and fanciful, has so far sat idly by and, with the exception of the Sherman law, has made no effort to curb these activities. The Interstate Commerce Commission, created to deal with rates, is a valuable addition to our legal and administrative system; but to these must be added something supplemental—something which shall reach to the sore spots in our business existence that neither of these regulating agents has thus far touched, and I

feel convinced that compulsory federal incorporation is what the situation demands, and will prove to be the remedy in which lies the cure for the situation as we now face it.

At present we have forty-eight separate jurisdictions, with as many separate and distinct regulating laws, dealing with the same problem in forty-eight different ways as best seems suited to the needs of the several states, regardless of the needs of the country as a whole. To put through uniform corporation laws in each of the states would be an utterly impossible task. The alternative is some regulation by the national government, and federal incorporation seems to me the easiest to accomplish and the quickest and surest in its benefits.

Other means of control have been suggested. Some hold out a form of federal license, others suggest a commission, similar in form to the Interstate Commerce Commission, having for its duties the regulating of business activities and prices.

I shall not comment on these suggestions other than to say that in my judgment either of them would necessarily abrogate to a certain extent the force of the Sherman law, and place in the hands of the executive branch of the government certain quasi-judicial functions. Such a disposition of the question is undesirable when unnecessary, and not to be made except as a last resort.

In the case of federal incorporation, however, these objections are eliminated. We there have simply a federal statute which defines in detail what a corporation shall do before a charter issues and just what it may do as to its financial activities after that charter has been made effective. It defines duties and obligations, prohibits certain things and prescribes in what way permissible things may be done. It makes no effort to name criminal liability for restraint of trade. It provides means for getting an entire publicity of all the business of the concern, and makes the activities of the Department of Justice in punishing the criminal trust simpler and more sure. It strikes at the root of the present evils if of broad enough scope, and, above all, is immediate in its action.

Having this form of regulation in mind I have recently drawn a form of law which has been presented in the House of Representatives and which I shall take the liberty to discuss in detail for a few moments. I am frank to admit that my bill is based on the Massachusetts law which has stood the test of time and proven itself. Several of its provisions are taken as nearly as was possible word for

word from the revised laws of the State of Massachusetts. In addition to those provisions I have added such further sections as seemed desirable until the bill presents sixty-seven sections and provides for complete publicity under the direction and control of the Secretary of Commerce and Labor and the Commissioner of Corporations. It distinctly prohibits the watering of stock or the issue of fraudulent or excessive or unsecured indebtedness. It states in express terms that no business shall be begun by a corporation until its entire capital has been paid in, either in cash or its equivalent in property. It further provides that no stock or scrip dividends shall be issued, that the Commissioner of Corporations shall first approve all issues of stock or bonds after the initial issue by the corporation, it permits the issue of employee's and special stock, it prohibits the issue of any forms of indebtedness which shall run for more than a year and whose total value shall exceed the outstanding securities and its paid-in capital and franchise value, it guards the issue of bonds, it prevents the sale of bonds at a less rate than par, but provides that a bond so sold shall be collectible at par by action in contract, it provides for the issuance, recording and transfer of stock, it has formal provisions for the management of the business of a corporation formed under it, it provides for the liability of officers and stockholders in certain cases, and provides for full publicity.

In addition to these general provisions the act is so framed that where penalties for violation of its several provisions are named they take the joint form of fine and imprisonment. There will always be found many willing to stand a medium fine if that is all standing between them and their desires, but few will care for the year's imprisonment which is added to the fine as a deterring influence. In an endeavor to limit the activities of corporations a section has been included in the act which provides that a corporation going outside its chartered authority to conduct any business shall be dissolved, after hearing and action taken by the attorney-general.

The problem of how to reach the corporation now in existence which would be amenable to the workings of such an act was a serious one, but was met by a section which provides that failure to take advantage of the terms of the act by any such corporation shall result in a fine for the corporation which shall not exceed one-tenth of its total valuation and a penalty for the officers and directors of such corporation which takes the form of a fine not to exceed one

thousand dollars and imprisonment for not less than one year. It prevents the formation of boards of interlocking directors, so-called, by forbidding a director in one corporation subject to the act serving as a director in more than four others, thus confining one man's activities in this line to five corporations, which does not seem unreasonably restrictive. It is also provided that the holding of the stock of another corporation shall be cause for dissolution. And by the final section it is provided that nothing in the act shall be construed as being an avoidance of any obligation or liability that may be imposed by the several states.

The scope of the proposed law is limited to those corporations engaging in any form of interstate commerce whose total valuation exceeds five millions of dollars. The problem in its serious phases is affected only by those corporations whose finances are so great as to make it possible for them to control commodities in price or to control a market, and practically only those whose resources are well above the amount named affect the money market or the economic situation. Smaller corporations can hardly be looked upon as a menace and combination of several of them brings the combined force under the proposed law.

The bill as framed deals with a situation simply. It affects in no particular the force of the Sherman law nor the functions of the Interstate Commerce Commission. It calls for no long investigations. It places corporations on record as to their financial activities and limits their business activities to the exact lines for which they were created. It leaves in the hands of the present forces of the government all the means they now have and adds largely to the fund of knowledge they already possess as to the intimate workings of the "big business" interests.

It is to be expected that objections to such a proposed measure will arise and the greatest of these affects its constitutionality. Hours might be spent in a discussion of this phase of the situation. Suffice it to say for this short discussion of the matter that the same objections would lie to a federal commission or a federal license.

There is one statement which was made by Mr. Chief Justice Marshall, who has done more than any other single jurist to make the Constitution the great working governmental function it now is, which strikes me as being exactly in point: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which

are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." This was said in the case reported in 4 Wheaton at page 420 and has been many times quoted in other cases. It would appear almost too simple to need dogmatic demonstration that the power to produce, which would be given by the proposed law to a manufacturing corporation, is plainly within the unprohibited means referred to by the first Chief Justice.

It is quite impossible in a short talk such as this to do more than touch upon the several things aimed at and hoped to be accomplished through legislation such as I have very briefly outlined. I want to say, however, that, as a general proposition, competition will be found a very good regulator of prices. We must keep competition and we must also acknowledge that modern conditions tend to combination and that combination has been responsible for many of the advantages we as a people are now able to enjoy and which without combination would have remained luxuries to us as they were to our fathers. It might be well as a supplemental measure to describe just what is an illegal and unreasonable restraint of trade, although it would seem that the legal rules are so clear that this would hardly be necessary if the members of the legal profession were frank with themselves and with their clients. But it does seem to be necessary to prescribe some regulations under which enormous industries may be carried on. The men at the head of these industries have asked for some such laws, as witness the statement of Mr. E. H. Gary, who said: "No decent man is desirous of violating the law or of doing anything which is inimical to the public interests. . . . Give us a commission to which we can go and say: 'Here are all the facts; here is what we would like to do; here are the probable results; we do not want to antagonize the law; we do not want to do anything we ought not to do; we want your advice.' " This proposed corporation law provides just what Mr. Gary asks for. All authority is found in the charter of every company incorporated under such a law as this. Its financial activities are limited by the terms of that law. Its business activities are clearly set forth in its charter. It does not have to go before a commission which may give it some authority it ought not to have or deny it something it should have. It merely does as the law says it shall do, no more, no less. A commissioner of corporations, who has no authority to assist it in any way

as a legal officer, sits wholly on the facts. If the corporation oversteps the bounds of its clearly defined rights the matter is placed in the hands of the Department of Justice and action follows. It is not the purpose of such a law to make prosecutions under existing laws altogether unnecessary, nor to make it permissible to do those things now forbidden. It is proposed to establish a stated form under which all corporations may work, to lay before the people at all times the full workings of the financial end of the corporation and to make it possible for publicity to force upon those who would not otherwise accept it, a certain well defined sense of business morality which must work to the alleviation of present oppressive and undesirable conditions.

Conceding for the purpose of this discussion that incorporation is properly within the powers of congress, is it not better to have a well defined law under which all business interests shall act than it is to have the administration of this department of governmental activity in the hands of a quasi-judicial commission that may sit in judgment on each case and make such decisions as will result in a further confusion of rights and obligations? With a corporation law there is no chance for the exercise of individual judgment to the detriment of one case and the advancement of another. With a corporation law all the cards are on the table and the game is an open one for all men to enter, understanding clearly when they start that all are to play it according to the same set of rules.

The enactment of a federal incorporation law would clarify the atmosphere, would supplement the good work now being done by the Department of Justice, would do away with the financial evils which have given us panics in the past and hold out no better promise for the future, and would bring together in working harmony the great financial interests which under the present order of things seem bound to be more or less out of tune with the national government.

CONTROL OF CORPORATIONS, PERSONS AND FIRMS ENGAGED IN INTERSTATE COMMERCE¹

BY JOHN SHARP WILLIAMS,
United States Senator from Mississippi.

I frankly confess that no public question ever gave me the degree of mental embarrassment that this one has, both in trying to diagnose the disease and in trying to suggest a remedy.

For a long time I wandered around in the dark, reading everything I could get hold of and trying to think the thing out as best I could. I found the difficulty lying in my way was not one of making up my mind as to whether we wanted to prohibit trusts or regulate them. I wanted to prohibit them, but in defining what a trust was so as not so to define it as, while prohibiting the trust, to prohibit a legitimate business of some sort.

Mr. Chairman, as long as I attempted to deal with the trust question as a question merely of magnitude, of status, and of definition, with the idea in my mind that there was too little law concerning it, I had more and more trouble. When I got hold of the idea that the trust evils have grown out of too much law—unlimited special privilege granted to corporations by charter laws issued by the states—then I began to see some light in connection with this question.

Mr. Chairman and gentlemen, all right government, spelling the highest expression of civilization, is a government of law, and not of persons; a government of uniform, prescribed, and published legal regulations, and not a government by regulations issued by a man or a board of men from day to day. The former is a government "of the people, for the people, and by the people;" the latter is, as Mr. Robert R. Reed has aptly expressed it, "a government of the day, for the day, and by the day."

In approaching the so-called trust question it is well to inquire first whence the evils arise. Legal provisions in state charters by express or permissive force are the source of all our trusts, monopo-

¹ This paper is an abbreviation and revision of a statement made by Senator Williams before the Committee on Interstate Commerce, United States Senate, February 16, 1912.

lies, near-monopolies, and restraints of trade. Thus the trust evil is one of too much law—not one of too little law—of too much corporate power granted by law. You will note that I do not say “unreasonable” restraint of trade. Restraint of competition is not always restraint of trade; it sometimes is precisely the opposite. Ex-Senator Edmunds gives an instance which is finely illustrative of this point. He says, suppose two mills were grinding corn in a neighborhood where the product of both mills could not be consumed and marketed, and where, therefore, each was grinding on half time and the two were compelled therefore to make up for this sort of inefficient business not only by employing their labor half time, but by charging consumers more than they ought to pay, the overcharge being necessary in order to make up for the time the machinery was lying idle. Suppose that the two companies combined and agreed that the power running one of the mills should be used to saw lumber and the other mill kept at its old work of grinding corn. Here would be plainly a restraint of competition and at the same time an increase of trade resulting in increased production, increased employment of labor, and in cheaper production of meal. I have never understood what a “reasonable restraint of trade” is. A “restraint of trade,” in its technical and legal sense, is necessarily a public injury and violative of public policy. I understand that there may be a reasonable and even a beneficial restraint of *competition*, which results in *increase* of trade and in public benefit. I suppose that is what the Supreme Court meant in its late Standard Oil and tobacco decisions. At any rate, it seems to me that that is what I should have said had I been on the Supreme Court.

But to return to the main point: There is not a great evil of combination existing to-day in interstate commerce that has not grown out of law-conferred or law-permitted privileges granted in state charters. I am not alone in this opinion, for Attorney-General Wickersham, in February, 1910, used this language:

No such comprehensive control over any one of the great industries which were dominated by those large aggregations of capital called trusts could have been attained but through the exercise of powers granted by the sovereign states, and the condition therefore, was strongly analogous to that which arose in the reign of Elizabeth. . . . The problem was complicated by the dual nature of our government. Concerted action by the states was impracticable—it may be said impossible. Efforts at control by one state were evaded first by removal to another, then by the device of holding corporations.

So far the Attorney-General and I agree. Afterwards we begin to differ. We begin to differ the moment we seek a remedy. He looks to a "new nationalism," either through Federal regulation of acknowledged but allegedly unavoidable "near-monopoly" by a body similar to the Interstate Commerce Commission, or through Federal incorporation. I don't mean that he would himself use the phrase "new nationalism," but that is a phrase which was used by a very distinguished and a somewhat vociferous ex-President to describe the same thing. I would look to what Governor Wilson, of New Jersey, calls "a new stateism;" to a more exact performance of their proper functions by the states; and to a more vigilant and careful guarding of the conditions prescribed in their charters by the states. The so-called "new nationalism" is nothing less than something worse than old "Hamiltonian federalism" revamped.

There is not in all the Scripture to me a sweeter phrase than that of St. John, in which he advises us to "reason together in brotherly love." Thus reasoning, let us see in the first place what is the object of all patriotic men seeking to be guided by the public welfare and not solely by their own private business interests? I think the answer is that that object is to divorce big business from government and government from big business as its ally. How has government been the ally of big business? Answer: By laws of incorporation, expressly or impliedly authorizing and permitting and making possible dishonest, unfair, or oppressive methods. Some one says: "Let government keep its hands off of business;" but the truth is that the interference of government with business began with the charter which created the corporation and conferred upon it, or permitted it to exercise, the powers which it exercises. The trouble is existing legislation, charter-enacted legislation. Without this first interference of law, the evils could not have existed. Just for one example: No corporation under the common law could own stock in another corporation, and except for an express power given to it in its charter, it cannot do it now. One can not too much emphasize the fact that the power to do wrong, dishonest, unfair things, conferred by charter law, is the source of all the evil, and that without this no trust, and no harmful big business, no monopoly, nor near-monopoly, could exist. If a man could, for example, without special privilege granted by law in a charter, raise all the cotton in the United States now being raised at a profit to himself and put it

on the market at four cents a pound; if he could do this by improved methods of cultivation and by improved machinery and by superior administrative ability, honestly and fairly, employing more laborers at higher wages, no harm could in the long run result to humanity, nor could he long maintain the relative magnitude and seeming absorption of the business, because other people would learn his methods and competition would soon set in on new lines, bringing about still further increased production, coupled with a still larger employment of human activities and with decreased price to the consumer. If one could, without any special privilege granted by law in a charter, make shoes at a profit to himself at \$1.50, which now cost \$3 to make when made by other people, no matter how large a business he could build up for himself, he would be doing something infinitely beneficial in the long run to the human race. You may depend upon it that men's abilities do not sufficiently differ one from another (they being first all restrained from indulging in wrongful, dishonest, or oppressive methods), to enable any one man or set of men to build up a monopoly or near-monopoly, or a large business "in restraint of trade." Men differ more with regard to scrupulousness and unscrupulousness than with regard to ability.

This brings me to the next point, which is, that the trust evil is not a question of magnitude, nor a question of status, but is a question of methods, and of law-granted special privileges. Federal incorporation is, in my opinion, not necessary, even if its constitutionality were not doubted. It spells governmental and industrial centralization; it spells more laws and more offices. Nor is Federal License—the Bryan remedy—necessary. License by an administrative bureau spells government by men and not by laws; it spells more and more bureaucracy, and in the long run it spells corruption and dry rot. What is worse, both of these methods spell not only centralization, but centralization of evil by Federal authorization, for so-called regulation of trusts means that.

Those of us who love local self-government—and the liberty and civilization of the world have grown out of it, and every government which has ever risen and fallen has fallen through the toppling over of the top-heavy machinery of government—those of us who believe that "government is a convenience and not a providence;" those of us who believe that the Federal Government is too remote from the people to be well watched by them, or to be capable of watching

them well, want to cure the existing evil of too much centralization of business and of industrialism by a decentralization of it.

Our remedy is a plain one, to wit, to prevent the evil by refusing, when evil methods are permitted and injurious powers are given by charters, to permit the artificial persons thus chartered to engage in interstate commerce. We would make it a crime for those thus chartered to commit evil to do business anywhere in the United States beyond the borders of the state chartering them. Let that state have the full benefit. It is its sovereign right to have it, but not beyond its own borders. It can not license wrong to enter into other states any more than it can be allowed to decree a spread from its own borders over other states of yellow fever or bubonic plague. We would, therefore, preserve local self-government by the states, but in essentials would persuade uniformity of state charter legislation by the exercise on the part of the Federal Government of its right by uniform prescribed law to define conditions and regulate the character of artificial persons permitted by it to engage in interstate commerce. I doubt whether Congress has the power under the pretext of "regulating" commerce between the states to destroy commerce between the states. Whether it have the power or not, I know it has not the right. But it has the power and the right and the duty even, in "regulating" that commerce, to destroy fraud, dishonesty, unfairness, and oppression, and to say that persons chartered by a state with powers so large as to permit them to commit fraud, dishonesty, unfairness, and oppression shall be penalized for the act of engaging at all in interstate commerce, until they have gone back to the state of their incorporation and procured a charter properly limiting their powers. You will see the importance of this when you remember that New Jersey, and I believe Delaware also—though I am not so sure of this last statement—have in some cases given powers to corporations so extensive, and in the opinion of the New Jersey legislators so oppressive, that the legislature has forbidden the exercise of those powers within the State of New Jersey. The power I claim here is not denied. On the contrary, Mr. Wickersham, whom I like to quote, because he is a man of great power and lucidity of thought and expression, in a public speech at Duluth on July 19, 1911, is reported to have used the following language:

If Congress should enact that no corporation engaged in interstate commerce shall hereafter acquire stock of any other corporation so engaged, and that unless

such corporation should dispose of all stock held by them in other corporations engaged in interstate commerce within some specified period, they should be prohibited from engaging in interstate commerce until they did so dispose of such stock, the ax would indeed be laid at the root of the trust evil.

My objection to regulation of so-called trusts by an executive bureau, issuing regulations or licenses, can be expressed by me in no stronger language now than the language which I used in a letter on September 27, 1911. I shall take the liberty of inserting it:

I can imagine nothing more dangerous to the American Republic than control of great corporations by a Federal bureau subject in its turn to a political administration of either party, excluding or admitting participation in business substantially at the whim and caprice and by the favoritism or enmity of the head of the bureau, influenced by Senators, Speakers, and Presidents, whose "pull" would be in favor of "good trusts" and whose frowns would be for "bad trusts." In such a case "good" would come to mean subservient. The remedy is to exclude trusts from interstate commerce, but to exclude them not by the fiat of a bureau (which in the last analysis is a man influenced by other men and acting secretly, with subordinates forbidden to give out information), but to exclude them by fiat of law, providing that corporations having charters conferring powers broad enough to establish monopoly or near-monopoly and not limited as they should be in the interest of the public shall be excluded . . .

I added, "this remedy seems to me to be the right one, efficient, sufficient, operating in the open and by force of uniform prescribed law." Please remember the phrase: "By force of uniform prescribed law;" a law published and known to all men, or knowable by all men, as contradistinguished from an uncertain, unforeseeable, spasmodic, inconstant, bureaucratic interference with business by a bureau working in secret, with regulations to prevent its employees from communicating to the public or even to Congress, knowledge of its methods or its work.

Those of you who know me, know that I do not indulge in denunciatory rhetoric. That is no way to "reason together in brotherly love," nor is it any way to procure the advantage of the cool light of reason in the analysis of a subject. Still you will excuse me for asking you this question: Who are they who are now beginning most strenuously to demand some sort of Federal "license" or "incorporation" for the regulation of trusts, so-called? I shall not even answer my own question, except by asking you one more: Are they not principally, if not altogether, those who are beginning to feel the halter of the present law draw? Unfair, dishonest, or oppressive big business,

which alone can build up monopoly, or near-monopoly, must be never licensed nor regulated nor incorporated by the Federal Government. It must be outlawed from interstate commerce; stamped out of existence; and it must be done by prescribing the limitations and conditions of "charter power" granted to artificial persons engaging in interstate commerce. The Federal Government is powerless to outlaw it within a state which may have chartered it, so long as it confines itself and its operations to that state, but it can exterminate it in interstate commerce by refusing to let it so much as enter that broad arena. It has the power and the right to do it. But above all let us emphasize the truth that the conditions to be imposed upon business in interstate commerce should be imposed by prescribed rules of uniform law, not by bureau enforcement of law to-day and bureau dispensation from the operation of law to-morrow. Nay, not even by presidential enforcement of law to-day and by presidential dispensation from the operation of law to-morrow.

Our English forefathers sent one king to the scaffold, chiefly because he arrogated to himself the possession of a degree of superior wisdom which would entitle him to dispense with laws which in his opinion were unwise, unjust, or destructive of kingly prerogative. The throne of another one was declared abdicated exclusively for that reason, although the law whose enforcement he suspended was wrong-headed, vicious, and tyrannical. Rely upon it, that if the law be the master, and be uniform, then big business which is not unfair nor oppressive nor dishonest nor "in unlawful restraint of trade" will not have a hair of its head touched, nor have it even so agitated as to stand on end, by the uncertainty of what the morrow shall bring forth. Why? Because its methods will be clean, honest, fair, and unoppressive. No man can make it afraid—only the law, and of that everybody ought to be made to be afraid. It need ask permission to do business from no man or men—not even from a chief executive. If it should be foolish enough to go to one and ask a question of that sort, the reply from a right-thinking President would be: "This is not a question for me to settle, but one for the judiciary to settle." And if he were further asked: "But I am uncertain about the law, and I want your construction of it," the right President's answer would be: "I am not your attorney; consult your attorney; and if you have no confidence in your old one, get you a new

one." The plan of the bill introduced by me involves not one single additional Federal bureau or employee—not one dollar of additional Federal expense.

Now, having laid down the proposition that the evil is to be met by prescribed charter conditions, that ought to be prerequired, to permit a corporation to engage in interstate commerce, we will ask what are some of these conditions? Mr. Robert R. Reed, of New York, and I—he chiefly, and deserving most credit for it, if there be any credit in it—have undertaken to prescribe them in Senate bill 4747, which is a revision, leaving out some things and inserting some things, of a bill introduced by me during the extra session.

I am going to incorporate that bill right here in full, so that you may read it.

The bill referred to is as follows:

[S. 4747, Sixty-second Congress, second session.]

A BILL to prescribe the conditions under which corporations may engage in interstate commerce and to provide penalties for otherwise engaging in the same.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no corporation shall engage in commerce between the States or Territories or in the District of Columbia by the purchase, sale, or consignment of any article of commerce, or otherwise, directly or indirectly—

First. Unless it is organized under laws with a charter that—

(a) State the business in which it is authorized to engage and the properties it is authorized to acquire;

(b) Provide that it shall have only such powers as are incidental to such business, and shall not have any power to hold the stock of any other corporation or association, to do any act or thing in restraint of trade, or to do anything outside of the state of its incorporation which it is not permitted to do therein;

(c) Provide that all its stockholders shall have an equal right to vote according to the number of shares held by them, respectively, at all meetings and for all directors, subject to any general limitation on the number of votes that may be cast by a single stockholder;

(d) Provide that no other corporation, association, or partnership shall have any vote or voice, directly or indirectly, in its affairs, and that no person representing, directly or indirectly, any competing business as owner, stockholder, officer, employee, or agent thereof, or otherwise shall have any such vote or voice, directly or indirectly, in its affairs or be eligible as a director or officer thereof;

(e) Provide that its capital stock shall be fully paid or payable, and permit it to be paid in property or services only when the value of such property or services has been determined according to the fact upon competent and specific proof under oath filed in a designated public office;

(f) Limit its surplus at any time to fifty per centum of its outstanding capital stock and its indebtedness at any time to not more than its outstanding capital stock and surplus;

(g) Provide that such corporation shall by an amendment of its charter be subject to and comply with, and, if necessary, shall accept, any requirement that may be made by the state of its incorporation and with any requirement that may be imposed by Congress as a condition of its right to engage in interstate commerce.

Second. Unless it is conducted and managed in conformity with the said provisions and limitations, and is organized under the laws of a State, Territory, or District in which its executive offices are located and its directors' meetings regularly held.

Third. If it, directly or indirectly, of itself or in connection with others, destroys or seeks unfairly to stifle fair competition in any part of the United States in the manufacture, production, mining, purchase, sale, or transportation of any articles of commerce not the subject of any patent, copyright, or trademark held by it either by making or effecting exclusive contracts, rights, or privileges relating thereto, by restricting its customers or other persons with regard to price, territory, or otherwise, in freely buying, selling, or transporting any such article, by securing the monopoly or control of raw material or sources of supply or of any business connected therewith, by temporarily or locally reducing prices with intent to stifle competition, by accepting rebates, or by any other act, device, or course of business that is unfair and tends to secure an unfair advantage and unreasonably and unfairly to destroy competition.

SEC. 2. That every contract made in violation of this act shall be void, and no corporation or association shall bring or maintain any suit or proceeding in any court of the United States unless it is organized, conducted, and managed as required by section one, nor shall this provision prevent the removal of any such suit or proceeding to such courts where such defense may be available to the defendant.

SEC. 3. That the prohibitions of section one and section two shall apply to any association membership in which it is represented by shares, and the word "association" used in this act shall include any joint-stock company, business, trust, estate, or any form of association used for business purposes; but said prohibitions shall not apply to any corporation or association not engaged in business for profit or engaged exclusively in any one or more of the following businesses: Education; a railroad or other common or public carrier of property or persons or messages; banking; insurance; the supply of water, light, heat, or power; or engaged exclusively and independently in any business or businesses the substantial bulk of which is carried on in foreign countries or exclusively in any one State or Territory or District, and which does not involve the transmission of goods from one State or Territory or District to another, nor the purchase, sale, or consignment of articles commonly the subject of commerce between the States and Territories, and actually intended for or becoming the subject of such commerce.

SEC. 4. That no person or persons shall form, operate, or act as or for a corporation or association for the purpose or with the effect of violating this act,

or conspire thereto and of themselves or by co-conspirator do any act or thing to effect such conspiracy.

SEC. 5. That every corporation, association, trust, or person violating this act shall be subject, upon conviction thereof, in case of a corporation or association, to a fine not exceeding ten per centum of its capital stock, or to a perpetual injunction against engaging in interstate commerce, or both, and in the case of a person, to a fine not exceeding ten thousand dollars for each such violation, and, if the violation is willful with intent to defraud or to create a monopoly or unfairly to stifle competition, to such fine and imprisonment for not exceeding five years.

SEC. 6. That the act of February eleventh, nineteen hundred and three, relative to the expedition of certain suits in equity, and sections four and five of the act of July second, eighteen hundred and ninety, known as the Sherman Anti-trust Act, shall apply to all proceedings and suits in equity under this act.

SEC. 7. That the purchase, sale, or consignment of any article intended to become and actually becoming an article of commerce between the States or Territories shall be deemed to be an act of engaging in such commerce under this act.

SEC. 8. That the foregoing provisions of this act shall take effect January first, nineteen hundred and thirteen, but shall not apply to corporations or associations having a capital stock and surplus under ten million dollars until January first, nineteen hundred and fourteen.

SEC. 9. That any corporation or association organized, conducted, and managed as required by section one shall, after the passage of this act, be entitled to engage in commerce between the States and Territories, and to carry on its authorized business relative to such commerce in any part of the United States, subject to the provisions of this act and to all present laws of the United States, and to future acts of Congress, and to the general laws and taxing power of any State, Territory, or District in which it may do business.

Some of the salient points of it are these: First, that no corporation shall engage in commerce between the states unless it is organized under laws with a charter that, among other things, contains these things as prerequisites: First, provides that "it shall have only such powers as are incidental to such business," and "shall not have any express power to hold the stock of any other corporation or association."

Now, remember that without an express power in its charter no corporation can hold the stock of another.

Nor "shall it have the power to do anything outside of the state of its incorporation which it is not permitted to do therein." Another salient point is that its charter must provide "that no other corporation engaged in any competing business shall have any voice or vote directly in its affairs," and that "no person representing, directly

or indirectly, any such corporation, as owner or stockholder, or as an officer, or an employee, or an agent, shall have any such vote or voice," "nor shall any such person be eligible as a director or officer therein." This provision, which seems to me very important, covers this: That where one person shall hold stock in two or more corporations engaged in competitive business such persons "shall not have the right to vote his stock at a stockholders' meeting," or in any other way. The reason for that provision is this: After the people who want to organize injurious big business had been driven from the technical "trust" method and were about to be driven from the "holding-company" method, they proceeded to make arrangements whereby certain men held stock (sometimes exchanging stock with one another for that purpose) in all of the competing companies, and thus by the election of directors at stockholders' meetings brought into effect combination and pooling arrangements with one another among the several competing companies. Now, you can not provide that John Smith can not buy stock in any corporation he chooses, but you can provide that if John Smith owns stock in two or more competitive corporations he shall not have a right to vote that stock at a stockholders' meeting in either of them, because the state creating the corporation has a right to regulate the manner in which the artificial person shall hold its meetings, how its members shall vote their stock and carry on its business. And Congress has the power to say that if this limitation do not appear in the state charter, then this state creature shall not engage in "trade between the states" or in foreign commerce, if Congress choose to go that far. This strikes me as a highly important feature of the bill.

I had not time this morning to read the paper at home; but coming up to the Capitol on the street car I observed this in the *Washington Post*. It is headed, "John D.'s votes rejected. Waters-Pierce tells defy mandamus in stockholders' meeting. Charge attempt is being made to perpetuate Standard Oil trust under new system."

Now, the Standard Oil trust has just been dissolved into its original, or into some sort of subordinate elements. John D. Rockefeller and those men who controlled the Standard Oil trust presented themselves at a meeting of the stockholders of one of these subordinate corporations with a large amount of stock; and those people

stated if they were really dissolved it was not good faith for the Standard Oil Co., substantially, to come in with a majority of the stock to elect the directors and to control and dictate the policy of the business of this company, which is the Waters-Pierce Oil Co.

The newspaper article referred to is as follows:

ST. LOUIS, Mo., *February 15, 1912.*

In a bitter fight which raged to-day at the stockholders' meeting for annual election, Henry Clay Pierce and his associates checkmated the effort of John D. Rockefeller and the Standard Oil interests to take absolute control of the Waters-Pierce Oil Co. The prize at stake is shown by sworn testimony in a recent suit that the Waters-Pierce concern in one year declared a dividend of \$240,000. The capital stock is \$400,000.

Although Standard interests own 68 per cent of the stock of the company, the Pierce interests refused to count the ballots of John D. Rockefeller, John D. Archbold, and their associates, on the ground they were attempting to perpetuate the Standard Oil trust under a new system.

The Rockefeller-Standard Oil interests filed a mandamus suit to compel the tellers to count the Standard Oil ballots; but the tellers, appointed by Pierce, refused to accept them and declared the Pierce slate of directors elected. The controversy will be fought out in a court beginning before Judge Kinsey Saturday, when the alternative writ of mandamus comes up for argument.

The move of the Rockefeller-Standard Oil interests to exercise control over the Waters-Pierce Oil Co., according to a statement given out by one of Pierce's representatives, is part of a country-wide plan to perpetuate the oil monopoly. The good faith of the Standard Oil people in complying with the decree of the United States Supreme Court dissolving the Standard Oil trusts was attacked in the Pierce statement.

Now, if there had been the law which I propose, there would have been no necessity to object to the lack of good faith, which was indicated by the fact that, although the Standard Oil trust had promised to abide by the dissolution decree of the court, it was attempting here in one case, and doubtless will attempt in many other cases later, to control the entire business of the subordinate companies acting ostensibly independently now, but which were formerly controlled by all of them together. They would have been met at the door with: "It is all right; you will get your dividends. You can acquire an interest in this business, but you can not vote at a stockholders' meeting."

Think a minute. Suppose that were the law to-day. The Attorney-General would not be troubled with "reorganizing" the Standard Oil Co. and the American Tobacco Co. after the courts

had dissolved these great trusts into their original elements, or had, at least, dissolved them into subordinate elements. Suppose the law were that no stockholder in more than one oil or tobacco company could vote in any? Each man who found himself possessed of stock in two or more of them would find himself in the condition where he would be impotent, because he could not exercise any power in organizing and controlling either company and would proceed at once to sell the stock in all but one, so that he might have some regulative control in at least that one. This would be especially true of those men who entertain monopolistic purposes "in unlawful restraint of trade." It would not cost them very much sacrifice to sell their stock in all but one; in fact, they would soon arrive at an arrangement by which A would exchange all his stock in corporation A for an equal amount of B's stock in corporation B. Another very important thing in the bill, I think, is the provision that where property or services are taken in lieu of cash in payment of stock, then the value of such property or service must be "determined according to the fact" upon "competent and specific proof under oath, filed in a public office," to be designated in the charter. Likewise, charters should, as they are required to do by another provision in this bill, limit the amount of surplus and indebtedness by fixing a proportion which these ought to bear to the capital stock.

At first I had an idea of undertaking also to limit the capital stock of corporations engaging in interstate commerce, still having confusedly in my mind the idea of mere magnitude as an evil. I found it utterly impracticable to do so. I could not fix in dollars and cents any amount beyond which a business would be *ipso facto* harmful and this side of which the same business would be beneficial, nor can you or any other man do it, in my judgment. I therefore came to the conclusion that the great evil of watering stock could be met only by these two provisions: First, that stock should be paid for in actual cash, or if not paid for in that way, should be paid for by services or property, with their valuation fixed by *prescribed rules on public proof under oath*; and, secondly, that the surplus and indebtedness should bear a percentage proportion to whatever capital stock the company had, thus limited, been permitted to issue.

Nor was I able to find any percentage line of demarcation that seemed even to my mind satisfactory. I could not say that if a

company did 51 per cent of the business of the country in a certain line that was necessarily a harmful business, and if it did 49 per cent it was necessarily not a harmful business. It is not a question of magnitude. It is a question of methods, or, rather, of *power to exercise oppressive methods*. If a corporation have the power, you may be sure it will exercise it, because there is profit in its exercise.

I think perhaps one of the most important provisions of the bill is clause 3 of section 1. It is intended to meet unfair methods which are daily practiced by some of the most oppressive of the great corporations. For example, the Sugar Trust has held its power over the trade very largely by prescribing that its customers shall sell sugar at a price to be dictated by it from week to week and day to day. Again, many great concerns in this country sell goods to merchants at a certain price upon the condition that they shall export these goods and shall not give American citizens the benefit of the price at which they were bought. Many other of the so-called trusts keep their throathold upon American industry by prescribing that their customers shall not sell outside of a certain territory; some others, that their customers shall not buy from others engaged in producing competing articles; others have gone so far as to sell upon the condition that their customers shall not sell even within the United States below a retail price fixed in the contract or branded on the package. A man in Memphis, Tenn., did a great public service by carrying one of these contracts through the courts up to the Supreme Court, who pronounced it void. But we do not want to make every man go into a long and expensive litigation to arrive at his rights. Another example familiar to most of us is to be found in the great shoe industry of this country, which is to-day shackled by the fact that the United Shoe Machinery Co. will not sell them at all certain machinery for bottoming shoes—or for doing something for shoes; I think it is bottoming them—a device which because of its great value has become absolutely necessary to the shoe industry—or even lease that machine unless the shoe factory leasing it agrees to buy a whole line of other machinery from this same company, or not to buy like machinery from anybody else. This clause 3 in section 1 is intended to meet all these evils by having the charters state that the corporation is forbidden to “destroy or seek unfairly to stifle fair competition” “by making or effecting exclusive contracts,” . . . “by restricting its customers, or

other persons with regard to price or territory, or otherwise, in freely buying, selling, or transporting" the articles purchased.

Another great evil, which is known to all of us, is the evil of temporarily or locally reducing prices solely for the purpose of driving out competition; reducing these prices below a fair competitive rate and then afterwards, the competition being driven out, raising them to whatever level the monopolistic corporation may choose, always high enough to recoup the temporary or local loss. The Standard Oil Co., for example, drove the Marietta Oil Co. in that way out of a healthful competition existing within a restricted field. Within this restricted field the Standard Oil Co. reduced the price of oil to a point below the cost of production and sold at a loss until the Marietta Oil Co. was destroyed.

Another instance familiar to all of us is the manner in which the Bell Telephone Co. operates. It is a great combination, extending all over the United States. There are many independent local companies which compete with it upon limited areas. The Bell Telephone Co. will enter these areas, reduce the prices for the use of the telephones to a point where no telephone company, not even itself, could make a living at it. It doesn't hurt the Bell Telephone Co., because it recoups by its profit elsewhere while it is suffering loss in the restricted areas, but it serves its purpose to drive local companies out of existence. Then, as soon as they are driven out of existence, the great company raises its prices.

The Legislature of the State of Mississippi used a little provision in a public law which cured that evil very nicely; they said that wherever a telephone company announced a certain price that that price should be held by what you call the public-service commission in most of your states, but it is the railroad commission in Mississippi, to be "a fair competitive rate" and above which the company should not charge. There was a date fixed after which this should be a law. Before that date arrived the Bell Telephone Co. had everywhere instituted "fair competitive rates," because it could not afford to have a rate below the cost of service declared by the commission to be a fair competitive rate.

Of course there are certain corporations to which this act, like all other acts regulating interstate commerce, should not apply. They are excluded in section 3 of the act from the operation of its provisions.

I will only add that the bill to which I call your attention gives ample time to corporations now engaged in interstate commerce to "organize" by going back to the several states of their incorporation or to other states and getting new charters complying with its condition.

Don't you think that even "big business" men ought to admit that this is better than reorganizing in each case, after lawsuit and in accordance with the provisions of a decree of a court of equity, without definite knowledge beforehand of how they ought to reorganize, even if they wanted to? The bill, of course, exempts no existing criminals from already-incurred penalties.

One other thing: It is supplemental and not supercessional of the Sherman law and repeals that law only in cases where it conflicts with it. In cases where there is conflict, of course, the last law counts.

One word more: Of course I want to say that this bill is chiefly valuable as giving the idea of a remedy. I attempted to put in it the provisions that I thought ought to be prerequisites to engage in interstate commerce. Of course you may think that there are others of much more importance, and you may think that some of these are not important; but the plan remains still the same.

I arrived at the conclusion after talking with some people who knew more about it than I did, that if the surplus was limited to 50 per cent of the outstanding paid-up capital stock and the indebtedness at any time was not to be more than the outstanding capital stock plus the surplus, that that would prevent or tend to prevent overcapitalization or monopoly or near-monopoly.

Now, it may be that the indebtedness ought to be a less percentage than that which I have indicated. In the bill you will notice that I merely say it is not to be at any time more than the outstanding capital stock and the surplus. It seemed to me that whenever a corporation gets to the point where its indebtedness is more than its outstanding surplus and all its stock, it is about ready to go into the hands of a receiver anyway.

SENATOR BRANDEGEE: I do not catch clearly your idea of the danger of having more than 50 per cent surplus. What is there dangerous about having a large surplus, if it earns it?

SENATOR WILLIAMS: It is required in fixing its capital stock to have it paid up, and it is required to go to the state authorities

when it wants to increase its capital stock. You see, it could increase its financial potency and evade the appearance of real overcapitalization just as much by building up a surplus with which it could work as by direct watering.

SENATOR BRANDEGEE: I have had no opportunity to read this bill, because it has just been handed to us. What do you provide in here about watered stock? You referred to that in your remarks, but you did not go into it in any detail.

SENATOR WILLIAMS: Well, I tried in the first bill, Senator, to fix a limit, but I could not do that. It was not satisfactory, even to me. Then, finally, I fixed this provision that I told you about.

You will notice that wherever one of these companies is overcapitalized it is not by cash stock, but by taking other plants or property or services and issuing stock for them. I require that wherever they take services or property, instead of money for stock, that they shall be valued by a public officer indicated in the charter, upon proof under oath made before him.

SENATOR BRANDEGEE: I understand that, but this is not the exact point I am inquiring about.

SENATOR WILLIAMS. I think that would prevent overcapitalization; that would prevent watering stock.

SENATOR BRANDEGEE: That is true as to that.

SENATOR WILLIAMS: Yes.

SENATOR BRANDEGEE: What I am trying to get at is——

SENATOR WILLIAMS (interrupting): You mean what I suggest as a remedy for stock already overwatered in already existing corporations?

SENATOR BRANDEGEE: Yes.

SENATOR WILLIAMS: I have nothing satisfactory to my own mind. I did not attempt it.

SENATOR BRANDEGEE: What I mean to suggest is this: If your bill was law, it would of itself prohibit corporations which at present have got watered stock out—although the stock may be earning dividends—it would prohibit those corporations from continuing in commerce among the states?

SENATOR WILLIAMS: No; I am sorry to say it would not.

SENATOR BRANDEGEE: Why not?

SENATOR WILLIAMS: Because they would just go on. This applies, of course, to their coming in with certain charter provisions

which are prerequisites—if they came in with charter provisions, it would affect all future watered stock, but not what they have already watered. I am sorry it does not, but I could not study out any way of doing that. Therefore I did not put anything in the bill. It ought to be done. That is, I do not mean that an overwatered corporation ought to be prohibited from entering into interstate commerce, but there ought to be some way of forcing them, either in this bill or in some other bill, if I may use the phrase, to “unwater” their stock.

THE CHAIRMAN: Senator Newlands, you may interrogate.

SENATOR NEWLANDS: This bill is in the nature of a Federal charter?

SENATOR WILLIAMS: No, sir; it is a Federal regulation of interstate commerce forbidding people of certain character with certain chartered powers derived from the states from engaging in interstate commerce and penalizing them if they attempt it.

SENATOR NEWLANDS: You do not regard it then as in the nature of a Federal charter to state corporations which are engaged in interstate commerce?

SENATOR WILLIAMS: No, sir.

SENATOR NEWLANDS: But simply as prescribing the conditions upon which they shall enter into interstate commerce?

SENATOR WILLIAMS: Yes, sir; and prescribing that if they have certain powers which enable them to do certain things in the judgment of Congress wrong or too large that they shall not engage in interstate commerce. The theory of the bill is this: That the state has a right to charter anybody to do anything the state pleases, except in violation of the Constitution of the United States, and the Congress has the right to say that that creature of the state shall not engage in interstate commerce unless it does it upon terms and conditions prescribed by Congress.

SENATOR NEWLANDS: Would you expect this bill, if passed, to work reforms in the corporation laws of the various states?

SENATOR WILLIAMS: Yes, sir; every one of the so-called trusts would have to go back to the states for new charters. I fix a time at which the bill shall go into operation, and any corporation which had not complied with the prescribed conditions made prerequisite by reorganizing and getting a new charter—that would be the sole reorganization needed, in compliance with the provisions of this bill—would be afraid to continue in interstate commerce.

SENATOR NEWLANDS: Now, assume that this bill should be passed and it should go into effect, and that an individual state should not change its corporation laws so as to be in harmony with it, what would happen to the corporation?

SENATOR WILLIAMS: That corporation would go to some other state and get a charter, just as a company that desired to do business in Mississippi goes now to the State of New Jersey, because the charters granted by the State of New Jersey contain greater power. Just, for instance, as when I left home a little company that was trying to operate an overhead trolley line in the country had a charter from New Jersey, not from Mississippi, and some time prior to that one faced me with a charter from South Carolina. They do not like Mississippi corporation law much and they get their charters outside of the state. They could do business in the state just as well. If some company chartered by Nevada, let us say, went to the Nevada Legislature and said, "We want to get a new charter in accordance with these Federal requirements," and the Nevada Legislature refused to give it to them, they would go to some other state and get it. They would have no trouble in getting their charters amended or new charters granted.

SENATOR NEWLANDS: Whom would you expect to enforce this law?

SENATOR WILLIAMS: The courts and juries and grand juries.

SENATOR NEWLANDS: And you would rely upon the Attorney-General, too?

SENATOR WILLIAMS: Yes; and the different United States district attorneys throughout the country, and the grand juries throughout the country, and the petit juries throughout the country, and public opinion moving them. One of my very objects is to not have it the business of any one man or set of men either to execute or dispense with the execution of the rules. I make it just like the law against petit larceny or any other crime.

If you left it to the grand juries and petit juries of the country to execute the law, just like you do any other law, the abuse of non-enforcement would be much less apt to occur than if there were a bureau or some man, or set of men, to do it. In the first place, a bureau could not keep its eyes on the whole country if its members wanted to, and in the second place, they would be amenable more or less to some sort of "influence." Somebody might come down and

explain to them that what they were after, and what they wanted to do, was "not a bad thing to be done; that they were just doing it altruistically and for the benefit of the public," like the Steel Trust persuaded Roosevelt when it absorbed the Tennessee Iron and Steel Co. Without any corruption or anything else they might persuade a very good man to suspend the operation of the law.

SENATOR NEWLANDS: That same influence can be brought to bear upon a district attorney or the Attorney-General, could it not?

SENATOR WILLIAMS: Not near as easily upon them and upon the grand juries and petit juries as it could upon some one bureau upon whom the concentrated fire of all these great business interests was directed.

SENATOR POMERENE: Senator, if I understood you correctly, you made a statement that you did not intend to in any way modify or repeal the Sherman anti-trust law except as it might be inconsistent with this?

SENATOR WILLIAMS: Yes.

SENATOR POMERENE: In what respect would you regard it as inconsistent with the provisions of this bill?

SENATOR WILLIAMS: A corporation at present under the Sherman law, with an express power in its charter of holding stock in competitive corporations, can do interstate business and commerce. Under this bill it could not. That is one instance. A corporation which had locally or temporarily reduced prices below a fair competitive rate for the purpose and "with the intent," as this bill provides, "to stifle competition," can do business under the Sherman law but could not under this bill. There are lots of provisions here under which, after the passage of the law, a company, without amending its charter, could not do business, but can do business now under the Sherman law subject to a lawsuit to see whether or not.

By the way, there is a provision in the bill that I forgot to mention; a provision excepting of course from the operation of the bill business carried on in consequence of patents and copyrights. That goes as a matter of course and of legal statutory necessity.

I think one of the things that recommends the bill is, that it leaves these people to go back to the state legislatures and get the proper charters, which they can do. It *induces and persuades* the state legislatures to a uniformity of corporation charter law, and it

does not so disturb the equilibrium of business as to hurt a single rightful legitimate interest of any description. If you notice, the bill strikes throughout only at wrong methods, dishonest methods, and oppressive practices, and in so far as stamping them out of existence would disturb any existing business, of course an existing business of that sort ought to be disturbed; but it does not disturb any other sort of business, in my opinion.

COMMUNICATION

THE COST OF THE ISTHMIAN SHIP CANAL

BY JOHN C. TRAUTWINE, JR.,
Philadelphia.

In a paper read before the Manufacturers' Association of Chicago on March 16, 1909, and reprinted in *Engineering News*, March 18, 1909, Lieutenant-Colonel George W. Goethals, Chairman and Chief Engineer, Isthmian Canal Commission, said:

"The estimated cost by the present commission for completing the adopted project, excluding the items left out by the Board of Consulting Engineers, is placed at \$297,766,000. If to this be added the estimated cost of sanitation and civil government until the completion of the work, and the \$50,000,000 purchase price, the total cost to the United States of the lock-type of canal will amount to \$375,201,000. In the preparation of these estimates there are no unknown factors. (These same figures are given also in the Annual Report of the Isthmian Canal Commission for the fiscal year ending June 30, 1909, page 31.)

"The estimated cost of the sea-level canal for construction alone sums up to \$477,601,000, and if to this be added the cost of sanitation and civil government up to the time of the completion of the canal, which will be at least six years later than the lock canal, and the purchase price, the total cost to the United States will aggregate \$563,000,000. In this case, however, parts of the estimate are more or less conjectural—such as the cost of diverting the Chagres to permit the building of the Gamboa dam and the cost of constructing the dam itself.

"The majority of the Board of Consulting Engineers estimated that from ten to thirteen years would be required for the completion of the sea-level canal. The Isthmian Canal Commission and the then chief engineer fixed the time from eighteen to twenty years."

In an interview published in *The Engineering and Mining Journal*, July 5, 1879, John C. Trautwine said, respecting a sea-level canal at Panama: "Taking into consideration the loss of interest on money and the cost of damages from floods, it is very doubtful whether

five hundred millions of dollars and twenty-five years of time would suffice to construct the Panama Canal."

In a letter to the *Polytechnic Review*, August 19, 1876, Trautwine estimated the cost of a sea-level canal, 100 feet wide at bottom, 200 feet wide at water line, and 30 feet deep, either by the short San Blas route (involving a tunnel) or via the Atrato River and the Bay of Cupica, at about \$300,000,000.

It will be seen that, considering the smallness of the canals which Trautwine had in mind, and on the other hand, the relative inefficiency of the appliances then at the service of the engineer, Trautwine's estimates are remarkably in accordance with those of the present day; but, in a paper entitled "Important Elements in Naval Conflicts," published in *THE ANNALS* of the American Academy of Political and Social Science, July, 1905, the late Admiral George W. Melville said:

"The latest estimate as to the cost of an isthmian sea-level canal is about \$230,000,000. In connection with the cost of such a water-way, it may be well to remember that Trautwine, about fifty years ago, estimated the cost as about \$16,000,000, or about seven per cent of the latest estimate."

How Admiral Melville came to make this very glaring, though of course unintentional, misrepresentation of Trautwine's estimates is indicated in the following extract from the latter's "Rough Notes of an Exploration for an Inter-oceanic Canal Route by way of the Rivers Atrato and San Juan, in New Granada, South America," published in the *Journal of the Franklin Institute*, March to November, 1854, or "about fifty years ago," relatively to the date of Admiral Melville's paper. In this document, estimating the cost of an insignificant water-way (*with locks*) "for steamers of about six feet draft, from ocean to ocean," he gives the following "supposititious" figures:

Twenty miles, constructed through the Napipi swamps	\$16,000,000
Two miles of deep cutting, averaging 150 feet in depth	8,000,000
Eight miles in better soil, and less unhealthy locality..	1,600,000
Deepening the Atrato, thirty-nine miles.....	7,800,000
Stopping up the upper end of Caño Tadia.....	1,000,000
Improvements at Boca Urabá.....	1,000,000
	<hr/>
	\$35,400,000
Interest on gradual expenditures during fifteen years	
of construction.....	15,000,000
	<hr/>
	\$50,400,000

It is to be noted especially that, although this estimate allows for "the exorbitant salaries necessary to induce officers to live (or, rather, to die) in these infernal regions," Trautwine speaks of this \$50,400,000 as "a sum which I regard as *totally inadequate for the purpose*," namely, for constructing "a route for steamers of about six feet draft."

It will be noticed, however, that, in this underestimate, the first item does happen to be \$16,000,000, less than one-third of the total, and it appears that Admiral Melville, or his informant, must have mistaken this single item for the total; but it must still be remembered that this underestimate of \$50,400,000 referred to a work which would have been wholly insignificant in comparison with even the canal with locks, now nearing completion at Panama, to say nothing of the far more formidable proposition of a sea-level canal.

Even the thirty-foot canals, which Trautwine had in mind, are trifles compared with the forty-five-foot channel now being constructed. That his estimates (\$300,000,000 for San Blas or Atrato, and \$500,000,000 for Panama—all sea-level) for so small a channel, are so nearly those estimated to-day for the much larger work now under construction, is at least partly explained by the facts: (1) that the present sanitation of the Canal Zone had not then been thought of; and (2) that no conception could then have been formed of the machinery and methods now available for such tasks.

For the Atrato route, at least, Trautwine based his estimate upon the use of *wheelbarrows*, saying that "horses and carts could not be employed."

Even Colonel Goethals might well have hesitated to attack the Culebra cut with wheelbarrows.

NOTES AND DISCUSSION

FISHER'S "THE PURCHASING POWER OF MONEY."¹

The announcement that, by means of careful and exhaustive investigations and computations, involving a wide range of statistical mathematics, authoritative statements have been secured of the volume of trade of the United States, of the velocity of circulation of its bank deposits, and of the volume of its circulating credit; and the further announcement that from these elaborated data and from the money-supply estimates of Professor Kinley, a final computation yields the same level of prices as that obtained by direct returns and simple averages, burst in upon the "dismal science" with the freshness of the news that men have begun to fly. It is comforting to men of science whenever they are satisfied that statistics have been found to confirm a theory. Respect for government bureaus grows. Statistics of prices, money, deposits, and trade prove one another.

What light does the investigation throw on the causes of price fluctuations? The branch of monetary theory involved is most important. Doctors disagree, as was shown last winter at the discussion of the preliminary presentation of the theory to the American Economic Association at St. Louis. The results of the book are summarized as follows (p. 310):

"Except for the growth of V (velocity of money) prices would have been one per cent lower than they were."

"Except for the growth of $\frac{M'}{M} \left(\frac{\text{deposits}}{\text{money plus demand notes}} \right)$ prices would have been twenty-three per cent lower than they were."

"Except for the growth of V' (velocity of deposits) prices would have been twenty-eight per cent lower than they were."

"Except for the growth of M , prices would have been forty-five per cent lower than they were."

The conclusion is that the growth of money was the largest factor in raising prices.

Why are readers not told what would have been the effect on prices if deposits had not increased? Why is the effect of deposits deadened by that of money? See what happened to deposits (p. 304): "These figures, or the dotted curves in the preceding diagram,² show that money in circulation (M) has nearly doubled in thirteen years; that its velocity of circulation (V) has increased only ten per cent; that the deposit currency has nearly tripled and its velocity of circulation (V') has increased fifty per cent; that the volume of trade has doubled, and that prices have risen two-thirds." The proportion of bank deposits to simple money circulation is as seven to one and a half. And if the composite circulation (M)

¹"The Purchasing Power of Money," by Irving Fisher, Professor of Political Economy in Yale University, assisted by Harry G. Brown, Instructor in Political Economy in Yale University. Pp. xxii, 505. Price \$3.00 New York: Macmillan Company, 1911.

²This refers to a diagram in Mr. Fisher's book.

be resolved into its fiduciary and monetary constituents, and the former be added to bank deposits, then the fiduciary element is sixteen times the real money (cf. p. 13). But this giant, Deposits, must be subjugated and put back to his proper place! The theory of causality as enounced by Professor Fisher is that a portion of this fiduciary element, the demand notes (quite arbitrary, so far as cause is concerned, for it depends merely on the individual convenience which prefers one form of debt to another), should be separated off from deposits and added to the money, and that then this incongruous summation should be looked upon as the real cause of the remaining and preponderant portion of credit, the deposits; and hence as the real cause of price fluctuation.

The labored statistical work has apparently done little to illuminate the causal inquiry. The conclusion is extra-statistical. At the meeting of the American Economic Association above alluded to, it was suggested that the causal chain might sometimes run from prices to trade or deposits or velocity. Professor Fisher answered that "P is the one passive element of the equation." This was very just. But he went on to say, "Besides the causal relation between M [circulation] and M' [deposits]," etc. The book contains numerous allusions to and affirmations of this causal relation.

Professor Fisher has apparently but followed the common practice of price statisticians, who, in making the direct computation of averages, bunch together money and demand notes. This procedure is permissible from their point of view. A vague contrast is, however, evoked between this repugnant combination, on the one hand, and deposits, on the other, which is fatal to correct reasoning when the combination is sought to be used as a datum for other equations or other reasoning. The excuse for this improper union is always that the immediate object in hand is an "equation of exchange." It is needed for the purpose of testing price statistics. Statisticians accept the popular sense of money in order to attain to its value. They admit and even loudly, at times, affirm that deposits have an effect on prices, but just when or how, is not expressed, or expressed inconsistently. How can the relation be clearly established when deposits are divorced from demand-notes, their allotropic form?

The theorist is alternately convinced that money (of some sort) or that deposits are decisive on the level of prices; but, in the absence of a proper theory to connect the two, feels that he must take the part of one, and generally falls back on vague "money" as the "regulator." If pressed hard on this point, he is apt to say that he really meant metallic money. The book under consideration has done nothing to clear up this ambiguity of money theory. The labors of that penetrating student, Professor Dunbar, in distinguishing the credit from the money spheres of action, find no echo. "The quantity theory, as thus stated, does not claim that while money is increasing in quantity, other causes may not affect M' [deposits], V, V', and the Q's, and thus aggravate or neutralize the effect of M [vague money] on the p's [prices]. But these are not the effects of M on the p's. So far as M by itself is concerned, its effect on the p's is strictly proportional" (p. 158). This statement attributes prices to vague money, M, i.e., money plus demand notes. Compare it with others: "Whether or not prices will continue to rise depends on whether the increase of gold and the

circulating media based on gold continue to exceed the growth of trade. It is the relation of gold to trade that chiefly affects prices" (p. 248). Could anything be more indefinite? The last statement attributes prices to gold. "The increase in M brings about a proportionate increase in M' " (p. 165). "Deposits (M') are chiefly the effect of money, given the normal ratio of M' to M " (p. 183). "We have seen that, normally, deposits rise or fall with money in circulation. Therefore, if deposits had increased just as fast as money and no faster, we should ascribe the whole increase to money alone" (p. 308). The trouble is with the attempt to use the equation for the causal analysis. Asseveration in favor of M , or composite circulation, is balanced by asseveration for money.

Causal theorists should reject demand-notes from the money item and add them to deposits, if the equation is to serve any purpose of causal inquiry. Evidently the connection of demand-notes with coin is only because their rapidity of circulation is assumed to be the same—a circumstance of no importance as bearing on analysis of causes. The fundamentals of money theory are analytic and not quantitative; but the members of the equation of exchange cannot be assumed to possess this character. A theory of causes is evolutionary. It must contrast environment with content and process. Through such contrast alone can explanation be reached. If it is sought to apply this method to the analysis of exchange practices, it is plain that the environmental part of the whole price-stuff is money-real money: it is the fixed condition under which prices are made. The real importance attaching to money is its contrast with credit. To mix it up with some credit and then attribute to this sophisticated "money" a price-causality is an *Unding*. It is only too common to mix money with a part of the credit and then seek to contrast this popular compound with "deposit circulation"—a very happy term, by the way. This mingling of money and credit is made necessary by the actual facts.

Why does not the book tell us what prices would have been if credit had not increased, or even if deposits had not tripled and their velocity had not augmented by one-half? Professor Fisher says in his paper before the American Economic Association (p. 8): "Of the four price-raising causes we find the most important absolutely to be the increase in bank deposits (M'). But if we measure these bank deposits (as they should be measured) relatively to the money in circulation, then their increase is found to be a less important price-raiser than the increase in the quantity of money." In the debate which followed, he referred his colleagues to his book. If, now, we turn to the book, what do we find? P. 154: . . . "The normal ratio which M' bears to M , which we have seen tends to be maintained." P. 150: "At the close of our study, as at the beginning, stands forth the equation of exchange as the great determinant of the purchasing power of money. With its aid we see that normally the quantity of deposit currency varies directly with the quantity of money, and that therefore the introduction of deposits does not disturb the relations we found to hold true before." P. 147: We are told that in the United States, "to meet any modification in other factors of the equation of exchange—such, for instance, as trade—the gold in circulation must bear the burden." To quote the numerous other asseverations that metallic or unmetallic money or

both control the quantity of deposits, would be going too far, but the curious reader is referred to pp. 154, 156, 157, 158, 161, 164, 165, 171, 181; 308, 317, 319, and also citations above for ambiguity as between *M* and money. Take for example p. 319: "Deposits subject to check depend on money in circulation, the two normally varying in unison."

We have been repeatedly promised proof of the causal relation, in which "money" or money determines the amount of credit. The statement has been reiterated. The only attempt at proof is found on pp. 50, 51: "Two facts normally give deposits a more or less definite ratio to money. The first has been already explained, viz., that bank reserves are kept in a more or less definite ratio to bank deposits. The second is that individuals, firms, and corporations preserve more or less definite ratio between their cash transactions and their check transactions, and also between their money and deposit balances." This is the proof adduced of the influence of money upon deposits. But the first statement speaks only of the influence of deposits upon money! It had been generally supposed that the ratio of deposits to money was chiefly a partial measure of expansion. But the book imagines a relation between deposits and circulation and connects that loosely with an (inverted) relation between deposits and money. After mangling credit, dividing it by money, and then redividing it by a part of itself, the book would have us believe that the science of mathematics proves that the influence of money on prices is greater than that of credit. Evidently no such result flows from the equation of exchange.

While the general principle that the quantity theory is a metallic theory is stoutly affirmed, the book admits that there are "transition periods" during which credit circulation may exert an influence upon prices. "In a similar way seasonal variations in the price level are reduced by the alternate expansion and contraction of an elastic bank currency. In this case temporarily, and to an extent limited by the amount of legal tender currency, money or deposits or both may be said to adapt themselves to the amount of trade. In these two ways, then, both the rise and fall of prices are mitigated. Therefore, the quantity theory will not hold true strictly and absolutely during transition periods" (p. 161). There is a chapter which deals briefly with transition periods, and states some of the principal incidents of the credit cycle. The term "transition period" is well chosen to complement the essentially static interpretation which is put upon the equation of exchange. If the equation be employed to ascertain more correctly the relative statistics of successive years, as Professor Fisher has done, the results may be made the basis of dynamic reasoning. But he also attributes to the equation an essential virtue, a relation deep down in the nature of things. There may be considerable to say for this view, also; but "figure worship" may be misleading. The unspoken hypothesis is evoked of a normal period during which the equation is regnant in the economic world, broken by convulsions during which it is dethroned and the powers of darkness hold sway. Perhaps moments occur when the equation represents tangible, business figures. If so, they are very rare. The equation is deep and valuable not because it gives concrete results but because it certifies to general, typical proportions. If the test of normality be a concrete correspondence, then practically all periods are exceptional, abnormal, and transitional. An equation

between and among average data presents no concrete correspondence. Why, then, found talk about "exceptional transition periods" upon the equation of exchange?

Names are, abstractly viewed, incidents of little importance, and Professor Fisher's eager championship of the quantity theory, without, however, its inflationist corollaries (p. 15), if taken by itself, may be regarded as a matter of taste. It is, indeed, a little strange that he who, in his works on "Income and Capital," and on "The Rate of Interest," so exaggerated the psychological influences in industry, should turn about and correspondingly exaggerate the materialistic influences that make for the level of prices. It has been seen that "transition" periods are neglected, and it is also plain that their prices cannot be accounted for on a materialistic basis. Professor Fisher is perhaps discouraged from continuing his support for psychological economics by difficulties connected with the principle that credit fluctuations cause international gold movements and consequent equalization of prices throughout the world. The book presents such movements as instantaneous, on the good, old plan of orthodox economics. Adjustments of gold to credit are continually taking place; but it demands a long period of credit expansion to bring about discredit. This qualification, unwelcome to quantity theorists, must be conceded in derogation of their touch-and-go mechanism. In fact, the adjustment is so tardy, and when it takes place goes with such a rush, that they must be perpetually either disappointed or shocked. Of course, he takes the quantity theory in the objective sense: "It is true in the sense that one of the normal effects of an increase in the quantity of money is an exactly proportional increase in the general level of prices" (p. 157). With such convictions, it is apparent that he felt compelled to accept the term.

Authors disagree as to what money affects prices, and how the effect is produced. Professor Laughlin properly groups all credit together—demand-notes and deposits—and thinks that this circulation cannot affect prices normally, since it is dealt out in proportion to business. Professor Fisher thinks that metallic money and credit money should be taken together. Still another possible view is that demand-notes plus deposits—and chiefly the latter—regulate prices in short periods, and together must be contrasted with metallic money, whose chief function is to step in as a substitute for failing credit, and at such moments to play a decisive rôle. The last view lends itself better to evolutionary logic; it has never been sufficiently presented. It is certainly illogical to classify credit-money in the same category with metallic money, except it be understood that, like any two extremes, they may be connected by a differentiated series. Such confusion on the part of economists may be a consequence of intimacy with legislation, which pays little heed to organic structure and processes.

In connection with the effect of credit on prices, the book cites a student of this phase of the subject, Dr. M. T. England (p. 273). Dr. England found that deposits sometimes continue to rise after prices have begun to fall, a circumstance which would seem unfavorable to the view that credit influences prices. The explanation, as discovered by Dr. England, is so favorable to the view that credit is the real influence at work, that a word should be said in expla-

nation. The conclusion is based, not so much on "the revival of trade following a crisis," as on the fact that banking practice, in the returns for "deposits," does not separate those based on commercial loans from those based on speculation, the so-called "Wall Street loans." It is well known that speculation is even more active on a falling than on a rising market, and stock-loans are correspondingly large. These speculative loans overlay, in the bank returns, the commercial, which are all the while shrinking, and which are the basis of those deposits which are directed toward the purchase of commodities. It is abstractly conceivable that deposits or other circulation originating in stock loans, might reach commodities at last, and justify some sort of a credit—quantity theory, if the speculation kept up long enough; but, as a matter of fact, it does not: commodities are purchased with the credit that was meant for that purpose and not with that which was meant for stock-market liquidations. Statistics favor the idea that it is not the whole body of credit but the commercial or the industrial credit that affects commodity prices for short periods; and that such prices fall because loans devoted to commodity purchases have already fallen. The industrial loans are falling while the stock loans are still rising.

The book adopts the usage of the term "price" in the sense of the old term "value," for exchange value in general. It proposes that the latter term ("value") should be used for "total value." But it frequently uses price in its old sense of money-exchange-value.

"Deposit banking is a device by which wealth, incapable of direct circulation, may be made the basis of the circulation of rights to draw" (p. 53). This statement follows the current view that credit is based upon those goods which may be pledged as tangible security. The term "based" is ambiguous. It is true that pledges are pawned for payment of debts; but it is also true that the real basis of an industrial loan is the goods which are expected to be manufactured with the aid of the loan. The credit thus represents, not the present pawned goods, but the future goods,—they are the real basis of the loan. This ambiguity is only too common in works on money, and can only be avoided by the shunning of the materialistic view of the question, altogether.

Economists and legislators will deeply thank Professor Fisher for his statistical labors. The results will soon be disseminated and appropriated for the common good. This book is pervaded by the common sense, the direct diction, and the large desire to assign credit where it is due, which make Professor Fisher's writings so attractive and wholesome.

W. G. LANGWORTHY TAYLOR.

University of Nebraska.

THE SCOPE OF THE SHERMAN ACT; THE INTENTION OF ITS FRAMERS.¹

BY C. O. GARDNER,
Harrison Fellow, University of Pennsylvania.

I. *The Passage of the Law*

On December 4, 1899, Senator Sherman of Ohio, introduced a bill in the Senate declaring "unlawful trusts and combinations in restraint of trade and production." The bill was referred to the Finance Committee which reported it, on December 14, 1890, in slightly amended form. The bill proved to be unsatisfactory and was referred back to the same committee on March 21. On March 27, the whole matter was referred to the Judiciary Committee, which reported, on April 2, a bill in the form in which it was finally enacted into law. This bill passed the Senate, April 8. It was then sent to the House where several amendments were attached; later a conference committee of the two houses struck out the amendments proposed by the House and recommended the passage of the bill in the form in which it had come from the Judiciary Committee. Both the Senate and the House accepted the recommendations of the committee and the bill became law July 2, 1890.

II. *The Authorship of the Act*

According to the best evidence at hand, the Sherman Act was the joint production of the members of the Judiciary Committee. Senator Edmunds wrote sections 2, 3, 5 and 6, and all of section 1, except the words "in the form of trusts or otherwise," which were probably inserted at the suggestion of Senator Evarts; Senator George wrote section 4; Senator Hoar wrote section 7; and Senator Ingals, section 8.

III. *The Framers' Views as to the Scope of the Act*

1. Was the Sherman Act intended to apply to all combinations? In support of the statement that it was not intended to apply to all combinations, we have the following evidence:

Senator Sherman, while explaining the bill which he had introduced, said: "It aims only at unlawful combinations; it is the unlawful combinations, tested by rules of the common law and human experience, that are aimed at in this bill, not the useful or lawful combinations." . . . After stating that, in his judgment, all trusts would have the inevitable effect of preventing competition and restraining trade he continued: "Still this can not be assumed against any combination unless upon a fair hearing it should appear to a court that the agreement is necessarily injurious to the public and destructive of fair trade."

¹ The main sources of information consulted in preparing this note were the debates in the Senate and the committee reports on the proposed law.

Congressman Culbertson, one of the House members of the conference committee, said: "Just what contracts, etc., will be in restraint of trade will not be known until the courts have construed and interpreted this prohibition."

Senator Hoar, in his autobiography, declares that he considers the law will never be held to prohibit lawful and harmless combinations. He says:

"We thought it best to use this general phrase (speaking of the wording in section one), which, as we thought, had an accepted meaning in the English law; and then after it had been construed by the courts, Congress would be able to make such other amendments as might be found by experience necessary."

Senator Edmunds, the chairman of the Judiciary Committee, in an article in the *North American Review* for December, 1911, expresses much the same sentiments in regard to the meaning of the law.

2. Was the law intended to apply to railroads? The original Sherman bill and the various amendments that were introduced early in the session, included combinations to prevent competition in transportation as among the things to be prohibited. The Bland amendment, introduced in the House, specifically declared that transportation corporations should come within the act. This amendment was adopted without debate in the House and later was agreed to by the Senate. Senator Hoar, in speaking of the amendment, explained that the Judiciary Committee had agreed to its insertion into the act, although they considered it already covered. "There is no harm," he says, "in concurring in an amendment which expressly describes it, and an objection to the amendment might be construed as if the Senate did not mean to include it." Later, the Bland amendment was stricken out by the conference committee as unnecessary.

3. Was the statute meant to apply to labor organizations? Objection was made to the original Sherman bill because it was so worded that it might possibly apply to such organizations. To meet this objection, Senator Sherman himself offered a proviso which declared that the statutes should not be construed to apply to labor organizations. In doing so he declared that he considered it unnecessary as the bill was never intended to reach them, but that he would submit it to avoid confusion. The proviso was adopted by the House, but later was stricken out by the conference committee.

4. Was the law intended to include the regulation of production? The title of the original Sherman bill was "A bill to declare unlawful trusts and combinations in restraint of trade and production." It is clear that the early bills were designed to reach production as well as commerce, but the great objection raised to the original bill and its substitute was that they would be held unconstitutional and the elimination in the final draft of all reference to production was probably due to an attempt to so word the bill as to avoid all possibility of its being attacked by the courts on the ground of unconstitutionality.

BOOK DEPARTMENT

NOTES

Alden, Percy. *Democratic England.* Pp. xii, 271. Price, \$1.50. New York: Macmillan Company, 1912.

Babson, Roger W., and May, Ralph. *Commercial Paper.* Pp. 253. Price, \$2.00. Wellesley Hills, Mass.: Babson Statistical Organization, 1912.

Bonham, M. L. *The British Consuls in the Confederacy.* Pp. 267. New York: Longmans, Green & Co., 1911.

In this interesting account of the activities of foreign consuls in the territory in control of the Confederacy, Dr. Bonham has brought together the results of a scholarly research of first-hand sources, manuscripts and interviews. The duties which consuls have to perform in a belligerent territory, particularly in the event of civil war, are among the most important entrusted to international agents. As one reads how these consuls protected their citizens against enforced enlistment, how they notified their government of the discrepancies in the maintenance of the blockade of Southern ports, we are impressed with the extremely difficult situation in which they were placed. If their action was disagreeable to the authorities at Washington, their exequatur would be withdrawn, while any friction with the Confederate authorities would have the same result and a further disagreeable consequence that the consul himself might be forcibly displaced. In many instances throughout this account, it is shown how important it was to understand exactly the rights and immunities of consuls. Numerous difficulties arose because of the lack of any precise determination of the status of the consul. Even the scholarly author would seem to maintain that the consuls in the Confederacy had no right to discharge diplomatic duties. Such is the case ordinarily, but when diplomatic authorities are withdrawn, consuls take over any and all diplomatic functions necessary to the protection of the interests, property and lives of nationals of their own country.

The tremendous importance of the consular position is just beginning to be dimly realized. Such a book as this should open the eyes of anyone holding the antiquated ideas of certain English and American writers, who declare with Lord Elingborough, that the consul is a commercial agent and enjoys practically no privileges and immunities. A professional consul—that is, one who devotes his whole time to his professional duties—is a public agent of his country, and while his immunities are less and of a somewhat different nature from those of a diplomatic representative, they are none the less important and are protected by international law.

Butler, Elizabeth B. *Saleswomen in Mercantile Stores.* Pp. xv, 217. Price, \$1.08. New York: Charities Publication Committee, 1912.

In this, her last contribution to a subject on which Miss Butler has spent many years of active study, she sets forth in careful detail the problem of the mer-

cantile establishment from the standpoint of the saleswomen. Her discussion of the provision of seats, the arrangement of toilets and rest rooms, store construction for light and air and the organization of the working force constitute a real contribution to the science of store organization. In an exhaustive discussion of the wages of women employees in Baltimore, Miss Butler shows that the range is from \$2 to \$18 per week, while the largest number of women in any one wage group earns \$6.00 a week. Although of no general bearing, the book will commend itself to all who are interested in the welfare of women workers.

Choate, Joseph H. *American Addresses.* Pp. xix, 360. Price, \$2.00. New York: Century Company, 1911.

Cornell, Walter S. *Health and Medical Inspection of School Children.* Pp. xiv, 614. Price, \$3.00. Philadelphia: F. A. Davis Company, 1912.

At first hand, the author has gathered a mass of interesting data bearing on the health of school children, which he presents in a cumbersome and rather unconvincing way. The book discusses all of the ailments of school children, and details the methods of their correction. The sections on Defects and Diseases, covering four hundred pages, detail the facts regarding sense defects, i.e. eyes, ears, nose and throat; diseases of the teeth; the nervous system; the skeleton and the skin; of mental deficiency; of nutrition; of speech defect and of infectious diseases. The other two sections of the book explain the objects and methods of medical inspection of schools, and analyze the problems involved in school hygiene.

While the work is suggestive and, in general, interesting, the presentation is frequently defective, much of the data are scattered and poorly classified, and the book, as a whole, lacks a conciseness and definiteness which militate strongly against its effectiveness. The author has made his contribution too general to be scientific, and too detailed to be popular.

Crane, Frank. *Business and Kingdom Come.* Pp. 100. Price, 75 cents. Chicago: Forbes & Co., 1912.

An optimistic, uncritical description of the welfare work and the plant of the National Cash Register Company.

Crane, Frank. *God and Democracy.* Pp. 72. Price, \$1.50. Chicago: Forbes & Co., 1912.

A remarkably progressive interpretation of religion in terms of modern thought.

Cross, Ira B. *The Essentials of Socialism.* Pp. ix, 152. Price, \$1.00. New York: Macmillan Company, 1912.

Spargo, John, and Arner, G. L. *Elements of Socialism.* Pp. 382. Price, \$1.50. New York: Macmillan Company, 1912.

The Macmillan Company has recently published two books on Socialism that are worthy of special consideration, although for quite different reasons. They are also indications of the improvement that is taking place in the discussion of Socialism. The old polemics for or against it are happily disappearing, and in their place are coming books that really help to shape public opinion.

Mr. Cross's book is a logical presentation and discussion of the various

principles that lie at the basis of socialistic thought. He shows in a clear-cut way the contrasts and opposition that lie between the various doctrines that make up the socialistic creed. I know of no place where the essence of Socialism is so clearly presented as in his fourth chapter. This alone is worth the price of the book to anyone that admires clear thought and logical emphasis. The book also has an admirable and well classified bibliography.

Mr. Spargo's book shows the emotional side of Socialism as clearly as Mr. Cross's book does its logical side. He talks in terms of heroes and of causes. It has all the moving force that characterizes his other works and will appeal to those who want something to feel deeply about rather than something to think clearly of. Why it should be called a text-book is hard to explain. It would be better described as a sermon. Such books are necessary for party appeals but the school is no place for them.

Currier, C. W. *Lands of the Southern Cross.* Pp. 401. Price, \$1.50. Washington: Spanish-American Publication Society, 1911.

This book records mainly the impressions of a delegate to the Congress of Americanists at Buenos Aires, who made the trip along the route now coming to be the chief tourist route of South America. Down the east coast to Buenos Aires, across the trans-Andine road to Valparaiso, thence up the west coast to the Isthmus, was the line followed. The usual places, therefore, receive due attention in the narrative.

Many interesting touches are found scattered through the book—but little pretense is made toward a comprehensive discussion of any country or city. The book is well written, very entertaining in fact, for the most part, and should prove especially welcome to the prospective tourist to South America. It will, as no formal guide book can, tell the tourist what he may expect in the many places of interest amid quite new conditions. The good bibliography is somewhat unusual in this type of book.

Dresser, H. W. *Human Efficiency.* Pp. xi, 387. Price, \$1.50. New York: G. P. Putnam's Sons, 1912.

The author, in common with many of the recent writers on "Efficiency," fails in his presentation because of the indefiniteness of his efficiency concept. Efficiency, he says, "begins in a neutral field, not far from the arena in which the issues between capital and labor are just now being fought out, adjoining the territory which socialism claims but not identified with it, contiguous to the entrancing region which we call 'success,' and related to the domains of education and moral reform." Later, he writes "the term 'efficiency' is, in the largest sense, a synonym for the art of life, for adaptation to nature." The author has thus taken for the field of his study, a large section of the realm of human knowledge. His attempts to cover this field are necessarily ineffective,—first, because of the great extent of the territory, and second, because of his loose method of writing. Dr. Dresser's book might be justified if nothing like it had previously appeared. But since the market is already over-flowing with similar works, this volume adds little or nothing to the sum total of human knowledge or to its availability for public instruction.

Evans, M. S. *Black and White in South East Africa.* Pp. xvi, 341. Price, \$2.25. New York: Longmans, Green & Co., 1911.

Graham, S. *Undiscovered Russia.* Pp. xvi, 337. Price, \$4.00. New York: John Lane & Co., 1912.

The journey which Mr. Graham describes extends from the Caucasus to Archangel. The greater portion of the narrative deals with the unfamiliar provinces of Vologda and Archangel. The author was not a tourist of the usual sort but spent his time with the people. The journey was made mainly on foot, the company was that of the peasants and the fare such as the small villages or the open country might offer. Under such conditions it is not surprising that the story is one of experiences unfamiliar to the average European even if he feels that he knows the great northern empire. We are introduced to the queer rural customs, half pagan, half Christian, the ikon worship, the blessing of the fields and the life in the forest stretches of far northeastern Russia—the land of the Samoyedes. Native traditions and folk tales of miraculous escapes from hardships and weird instances of divine intercession are recounted. The best portion of the book is that which describes the life of the traveler from day to day, the manner of life of the peasants, and of the exile colony, the method of agriculture, the system of administrative espionage and control, the commerce on the far northern rivers and the prevalent mediæval conditions in the country districts. The author is in hearty sympathy with the simple, and on the whole contented, life which the peasant of the far north leads. He takes occasion to draw many comparisons not to the advantage of our hurried western civilization. This is an unusual travel book, one which leaves with the reader not the impressions of one who has merely visited the provincial capitals, but of one who has actually lived in the civilization he describes.

Hammond, J. B., and Barbara. *The Village Laborer.* Pp. x, 418. Price, \$3.00. New York: Longmans, Green & Co., 1911.

The changes in English political, social and industrial life which date from about 1834 are well known. The actual causes of some of these developments, for instance, the political, have also been frequently discussed. With reference to others, we have been rather poorly informed. The present volume fills in some of these gaps in our knowledge and throws new light on some of the developments.

In essence this study treats of the village laborer from 1760 to 1832, or during the period in which the enclosure acts were carried out, the Speesthamland Act devised to meet the new conditions, and the revolt of the laborers in 1830 against the situation in which they were placed.

Much has been written about the enclosure acts but little is usually given by way of description of the methods of executing them or their social results. The attempt to supplement deficient earnings, the essence of the Speedhamland Act, has been described with rarely an effort to connect it with the enclosure policy. We are indebted to the writers for their readable and accurate description of the actual working of these measures.

It is evident that the writers' sympathies are wholly with the laborer. This is normal but may lead to an unconscious exaggeration of the amount of evil intent in the minds of those who were responsible for the newer programs.

The grasping landlord with his satellite, the curate, and the willing or ignorant parliamentarian who votes as desired are given short shrift. At the same time the ideas of the best students of the time are also outlined.

Altogether much valuable material is here presented. One who wishes to understand the development of the English poor law, to learn therefrom what policies to avoid elsewhere, as well as the student of local government, will gain much help from the reading.

Henderson, C. R. *Industrial Insurance in the United States.* Pp. x, 454. Price, \$2.00. Chicago: University of Chicago Press, 1911.

Jeffery, R. W. *The New Europe, 1789-1889.* Pp. viii, 401. Price, \$2.50. Boston: Houghton, Mifflin Company, 1911.

Klemm, L. R. *Public Education in Germany and in the United States.* Pp. 350. Price, \$1.50. Boston: R. G. Badger, 1911.

Larymore, Constance. *A Resident's Wife in Nigeria.* Pp. xviii, 299. Price, \$1.50. New York: E. P. Dutton & Co., 1911.

Mrs. Larymore is one of the few women who have dared to accompany their husbands into the heart of darkest Africa. Her story of experiences in Nigeria is both unusual and fascinating. Strange landscapes and strange customs never so overwhelm the author that she loses her keen power of observation or her lively interest in feminine affairs. All through the book, both in the reproductions of photographs and in the text, emphasis is given to woman's life in Africa, —both the life of the native and the conditions against which European women must contend—the latter she feels is important because of the general belief that tropical countries must ultimately belong to the European nation which can bring its women to live in the country. The descriptions of native cooking, dances, ornaments, embroidery and house-building, give a large amount of information which the ordinary sojourner in Nigeria either overlooks or neglects as not worth emphasis. The latter portion of the book is composed of "household hints,"—not to natives or residents but to show what European women can expect in this country. We are told what to wear, the necessities of camp life, what transportation difficulties must be met, what can be grown in the garden and what domestic animals may be counted upon. To those who are interested in the economic future of Central Africa rather than its present these comments are especially valuable.

But it must not be assumed that this volume is one on home economics. There are fine descriptions of adventure. Shooting rapids, taming serval cats and the experiences of camp life all contribute to make the book entertaining as well as valuable for its information.

Levine, Louis. *The Labor Movement in France.* Pp. 212. Price, \$1.50. New York: Columbia University Press, 1912.

This volume is significant both in its timeliness and in the thoroughness with which it traces the development of syndicalism in the country of its greatest present vigor. The theory of revolutionary syndicalism is shown to be old. It is a return to the ideas underlying the "International," in which the influence

of Proudhon, Marx and Bakounin appeared in composite form. But the working out of these old ideas as the groundwork of present-day syndicalist practices, amounts almost to a new development at the hands of the workingmen's groups themselves. It is an outgrowth of conditions in which differences of individual opinion have had to disappear or be merged into a group view. The result has been a common stock of ideas, the similarity of which, to the "International," is due in part to the fact that the "International" developed out of similar conditions. The outcome of the movement cannot be predicted. But the issue is definite, and a struggle is inevitable. The government of the Republic is determined to put down the revolutionary activities of the Syndicalists, and the Syndicalists are seemingly bent on fighting their battle to the end.

Levy, H. *Monopoly and Competition*. Pp. xviii, 333. Price, \$3.25. New York: Macmillan Company, 1911.

This work is an English translation of the German edition published in 1909, a review of which appeared in *THE ANNALS* for May, 1910.

Lottin, J. *Quetelet Statisticien et Sociologue*. Pp. xxx, 564. Price, 10 fr. Paris: Felix Alcan, 1912.

An ever widening group of scholars is coming to appreciate the work of the great Belgian statistician, in developing statistical methods of research. For a discussion in English of "Quetelet as Statistician" we are indebted to Doctor F. H. Hankins, now Professor at Clark College, who made this the subject of his dissertation at Columbia University in 1908.

The present interpretation of Quetelet's work is presented in six parts, the first of which is devoted to the facts of his life, and the second, to his statistical writings, analyzing the beginnings of his scientific inquiries and the development of the theory of probability. The third part discusses the application of the theory of probability to the observation of phenomena. The significance of statistical regularities and the concept of natural law are explained. Type, variation from type, and the problem of final causes are considered. Part four takes up the sociological system of Quetelet and the following part deals specifically with the relation between freedom of the will and social laws, analyzing the influence of the individual upon society and of society upon the individual. The last part presents Quetelet's idea of the average man, both physical and moral. The book is accompanied with extensive bibliography and will be welcomed by students of statistical and sociological method.

McCarthy, Charles. *The Wisconsin Idea*. Pp. xvi, 323. Price, \$1.50. New York: Macmillan Company, 1912.

Wisconsin has done something unique in making a living place for her citizens. With natural opportunities no greater than those of surrounding states, she has, through the instrumentality of fundamental education and insistent legislation, shaped the environment to meet the needs of her citizens. She has thus fulfilled the author's demand—"if in our modern life, conditions are not conducive to the highest type of American manhood, we should attempt to find some way of helping men to help themselves." It is in this hopeful spirit that Wisconsin has worked, and that the author has written.

Macgregor, D. H. *The Evolution of Industry.* Pp. 254. Price, 50 cents. New York: Henry Holt & Co., 1912.

The Home University Library of Modern Knowledge has already amply justified itself, and this little volume fully meets its purpose in the series. Events are outlined in such a way as to emphasize principles, and the evolutionary interpretation which these embody leads up to a telling picture of the present condition of wage earners.

That there has been a rise in well-being among the working classes is illustrated by statistics showing an increase of real wages during the past half century. But the poverty situation in cities has become a blot on the present economic order, the removal of which is an object of prime concern. Politics is becoming increasingly concerned with the social results of industry, and the rising democracy of the past quarter century will not rest short of a re-assumption on the part of the working classes of some of the industrial independence they have lost since the beginning of the nineteenth century.

Marsh, B. C. *Taxation of Land Values in American Cities.* Pp. xv, 115. New York: The Author, 1911.

The sub-title of this essay, "The Next Step in Exterminating Poverty," is reminiscent of Henry George, as are many phases of the elaboration of its main theme. But the points of contrast are more prominent than those of similarity. For Mr. Marsh is not primarily interested in an abstract justification of a single tax. He is more interested in the consequences of a system of municipal taxation that would lay chief emphasis on land taxes. These he tries to show, with an impressive array of facts, would remove much of the burden from industry, reduce city debts and encourage the logical and economic development of cities. "Adequate taxation of land values would reduce the cost of living by \$20 per family up, for different classes in cities."

The tone of the work is that of a propagandist. But whatever element of error there may be in expectation and prophecies, the author's industry has afforded a very timely and serviceable collection of material on land taxation in cities.

Martin, Percy F. *Salvador of the Twentieth Century.* Pp. xvi, 328. Price, \$4.20. New York: Longmans, Green & Co., 1911.

Most writers see Central America through colored glasses. Mr. Martin is no exception, but, unlike the usual traveler, he can see almost nothing which merits criticism. The point of view is as extravagant as the English used. A few quotations will illustrate both. We are informed that "The form of government in vogue is that of a free sovereign and independent republic—that is to say, democratic, elective and representative. In Salvador the President is a reality not a mere figure head. He makes his presence felt and yet in a perfectly constitutional manner; he associates the form of government with the reality of government." In discussing the educational system we are informed "San Salvador has between six and seven important educational institutes," "schools, colleges and universities are to be found in all of the departments." Inasmuch as Salvador is about one hundred miles long by thirty-five miles wide with twelve departments and about a million inhabitants, there would seem to be no lack

of opportunity for education. Through the government's kindly aid as a result "many a genius has been rescued from probable obscurity." But the best illustration of the character of the book is found in the opening paragraph which informs us that in 1502 Columbus "in consequence of the mutiny among his ruffianly followers (put) into Hispanola" and discovered Salvador. It is enough to point out that the Salvador Columbus discovered was an island in the West Indies not territory lying on the Pacific coast.

Mr. Martin gives us a highly colored, loosely written description of a country which he believes has been much neglected. A large amount of space is given to biographical sketches of the chief officials and to the "short sighted" policy of the foreign office and Ambassador James Bryce. American and German trade methods are described and praised. Two chapters trace the financial history of the country and the unfortunate complications which have made the central American republics contribute to their own bankruptcy and that of their neighbors.

Moore, H. L. *Laws of Wages.* Pp. viii, 196. Price, \$1.60. New York: Macmillan Company, 1911.

Muir, William. *Christianity and Labour.* Pp. xxiii, 316. Price, \$1.50. New York: George H. Doran & Co.

The church has always been concerned over the welfare of the laborer, but local church groups have too often neglected or ignored the problem in its local aspects. This situation is as often attributable to ignorance as it is to the prejudices and antipathies of the better-to-do. It is against this ignorance that the present work is mainly directed. It is a plea for a truly Christian solution of the labor problem. Ethical aspects are regarded as of first importance, but economic considerations are treated in a really fundamental way. The status of labor is described historically as well as in terms of contemporary facts. A truly Christian life may gather around an income of a pound a week, but the chances are all against it. "However wise or good they may be, lessons on thrift cannot but be ineffective so long as they are given to mill girls by those who spend as much on holidays as their hearers earn; or to workingmen by those who spend as much on golf as their hearers have for all the necessities of life." Real Christianity lies in the recognition of facts, such as these, and in real effort looking toward remedy. This volume should contribute indirectly to the latter of these ends through its unquestionably direct contribution to the former.

Page, T. N. *Robert E. Lee—Man and Soldier.* Pp. 734. Price, \$2.50. New York: Charles Scribner's Sons, 1911.

Reynolds, S., and Wooley, Bob and Tom. *Seem's So—A Working Class View of Politics.* Pp. xxvii, 321. Price, \$1.60. New York: Macmillan Company, 1911.

Stephen Reynolds has been instrumental in making a real contribution to our knowledge of working class psychology, as this book contains, in narrative form, the political, social and economic views of two English fishermen. The rugged honesty of their speech has been retained, and the book throughout sounds strongly of the alley and the trade union meeting.

The author sees the humor as well as the irony surrounding the lives of these men, and he speaks it in no uncertain terms. For instance, he gives a workingman's opinion of the parliamentary candidates at an election. "A few days after the general election of January, 1910, I happened to be present while a number of working men, some of them strongly partisan during the election, some of them newspaper-readers and others not, were chatting it over among themselves. 'Well,' remarked one, 'tis a good job 'tis over, I say. 'Twas a lot of fuss and precious little to come of it. We've got one of 'em in by a big enough majority and fired t'other man out, and nuther one of the hellers is any better than t'other one'" (p. 127). Similarly, he writes of the attitude which such people hold toward socialism and atheism. "The word socialist is still a lump of political mud, handy to throw at any opponent; just as twenty years ago the word atheist was, and as twenty years hence some other word will be. But socialistic ideas, under any other name, or no name at all, seem to have made astonishing headway among the working men of both parties, so much so that even the word itself is becoming somewhat less of a bogey." These two quotations are representative of the keen style and spirit in which the entire book is written.

Scott, Leroy. *The Counsel for the Defense.* Pp. x, 431. Price, \$1.20. New York: Doubleday, Page & Co., 1912.

A thrilling story of the unmasking of political corruption in an Indiana town. The author makes clear the method by which good men often are made the agents and victims of unscrupulous and grasping corporations, and again, the way in which the weaknesses of human nature sometimes are capitalized for the purposes of public spoliation. The heroine, who is a Vassar College girl, who has studied law and who becomes counsel for her father, who is the innocent victim of a political intrigue, is an excellent example of the woman who has found that interest in life and in work is a necessity for happiness and in which she has sacrificed no element of womanly grace and charm. The plot is intensely fascinating and full of real dramatic strength.

Simiand, F. *La Méthode Positive en Science Economique.* Pp. 208. Paris: Felix Alcan, 1912.

This little book, which takes its title from that of the final essay, is made up of a number of studies, or parts of such, varying in date, purpose and occasion. There is unity of treatment in the fact that all turn on questions of methodology. The author's thesis is that economic science has for its object the recognizing and explaining of economic reality. This sounds truistic, but both emphasis and content amply justify repetition. Even in the critical handling of successive themes the author's constructive purpose is seen in the tracing out of the tendencies of a positive economics. For instance, the contradictory possibilities of psychological economics are clearly defined; but the main note is struck in the conclusion that psychological observation, not psychological deduction, must be made the rule, unless economics is to be a purely conceptional science. A positive economics must seek the psychology of economic life, not arbitrarily suppose it. A truly experimental method is needed to this end. The further radical vice of explaining phenomena of a social nature with reference purely to

individual phenomena must likewise be corrected. A truly sociological method must be employed with all classes of social phenomena whether they be religious, juridical, moral or economic.

Smith, S. G. *Social Pathology*. Pp. viii, 380. Price, \$2.00. New York: Macmillan Company, 1911.

Smith, W. H. *All the Children of All the People*. Pp. ix, 346. Price, \$1.50. New York: Macmillan Company, 1912.

"However reluctant one may be to acknowledge the fact," writes the author in his preface, "it is none the less certain that the task of trying to educate everybody, which our public schools are engaged in, has proved to be far more difficult than the originators of the idea of such a possibility thought it would be when they set out upon the undertaking. This is a mild way of stating an important truth."

It is in the endeavor to establish this fact beyond cavil, and to indicate the methods by which the public school system may be made to fulfil its original purpose, that the author writes his popularized version of modern educational problems. "Born Short," "Born Long," "Again the Kids," "Bits of History," are chapter headings which indicate the character of the treatment. The style is interesting, although at times cumbersome, and the presentation is always easily followed. The author has brought together a number of educational problems which the average man has not thought out, but which the student of education has long since decided.

Stout, R., and J. L. *New Zealand*. Pp. 185. Price, 40 cents. Cambridge: University Press, 1911.

This volume from the "Manuals of Science and Literature" series, lives up to the standard established by other books published earlier in the series. It gives a general survey of the most interesting of British Colonies, describing the features of New Zealand, its products, people, early history, especially the Maori's, and the present social, political and economic conditions of the colony. A good deal of instructive information is crowded into a small space; and it may be said fairly to attain its object of presenting in convenient form the salient facts concerning the country.

Thwing, C. F. *Universities of the World*. Pp. xv, 284. Price, \$2.25. New York: Macmillan Company, 1911.

It is no perfunctory thing to say that in his "Universities of the World," Dr. Thwing has filled a real gap in educational literature. The literature relating to universities hitherto has been heavy or historical. This book is neither a catalogue nor a ponderous narrative. It has the fascination of a continued story while emphasizing the essential features of university life and organization the world over.

Dr. Thwing ranges from Oxford to Tokyo. In all twenty universities are described, pictured and characterized, with one exception, from direct observation. Upsala and Cairo shake hands in the presence of the eminent and ancient, the modern and obscure.

The German type of university is found to be the "most impressive form

of higher education of modern times." The American university is intellectual in its aim but individual in its efficiency. But this efficiency is essentially different from that of the English type as well as from that of the vocational type represented by the universities of the Far East. In this book the value of universities is revealed both from what they do as well as from what they fail to accomplish. There are even universities we learn that only reflect and perpetuate the civilization in which they find themselves. There are some that are the light of life—the creators not the creatures of civilization—the controllers not the mere conservers of the things of the spirit.

The special student will miss in Dr. Thwing's book some things he would be glad to learn from it. Even he, however, will find valuable facts and interpretations regarding universities concerning which it is not easy even for the specialist to secure information. The lay reader will find the book illuminating and a delight.

Turner, Edward R. *The Negro in Pennsylvania.* Pp. xii, 314. Price, \$1.50.

Washington: American Historical Association, 1911.

This essay of two hundred and fifty pages, the balance of the volume being a detailed bibliography and an index, won the Justin Winsor Prize in American History for 1910. The author who is Professor of History in the University of Michigan shows himself an extremely industrious and conscientious student. Every student of Pennsylvania history is in his debt. The context though condensed is readable and logical.

The volume covers the period from the first introduction of negroes to 1861. Slavery, Manumission, Abolition, Sewituch and Apprenticeship. The Free Negro, The Suffrage, Race Prejudice, Abolitionism and Anti-Slavery are naturally the chief topics. One chapter is devoted to "Social and Economic Aspects of Slavery" and one to "Economic and Social Progress." The author's main interest is not in the negro but in the effects of his presence upon the white man, his laws and customs.

Dr. Turner makes clear the various and often conflicting reactions of the whites and shows the influence Pennsylvania had upon the Southern States. He feels, and makes a good case for his feeling, that popular usage has reversed the proper application of the terms abolition and anti-slavery. He points out that the early abolitionists were seeking to end slavery by slow and legal measures, the later anti-slavery group being the one demanding violent interference. In making clear the different attitudes of the state, Dr. Turner has performed a real service. It would be well for all those who specially criticize the South to-day to learn how similar were the earlier experiences here.

It is a study deserving not only of the prize—but likewise of general notice.

REVIEWS

Bailey, L. H. *The Country Life Movement in the United States.* Pp. xi, 220. Price, \$1.25. New York: Macmillan Company, 1911.

It is seldom that a small book covers such a large problem so effectively as in this case. The country life movement as the author sees it is a desire "to even up society as between country and city," for there is a lack of adjustment between the two which must be remedied, if the present century is to belong to agriculture and the open country as much as to the city.

Some of the more important topics discussed include: (1) the present movement in its national and international phases; (2) inter-relations of city and country; (3) the declining rural population and abandoned farms; (4) the outcome of our industrial civilization; (5) the problem of agricultural education; (6) the relation of women to the country life movement, and (7) the problem of securing community life in the open country. Labor, marketing of crops, county fairs and soil conservation are also discussed at some length.

A multitude of valuable ideas and suggestions concerning country life are found in connection with the different topics. Thus in answering the question, "Can a city man make a living on a farm?" the answer is that he must know how. City men who have made good are the exceptions "unless they began young." "Farming is no longer a poor man's business," and "city people must be on their guard against attractive land schemes," for the cases where it is possible to pay for land and make a living out of it at the same time are few. "Farming is a good business, but it is a business for farmers," and the farmers themselves must be responsible for improving rural conditions.

Although the problem of making country life what it should be cannot be attained by any single means, the author believes that the fundamental need is "to place effectively educated men and women in the open country." Agriculture in the schools is necessary not because it is a concession to farming, but because it is rightly a school subject; without it the public schools do not meet their obligation. Reorganizing the household part of farm life so that woman may be more of a factor in the affairs of her community, and bringing people together so that they may act together on questions affecting the community, are two other great means of developing a better country life.

In conclusion the author suggests that the open country must solve its own problems; that profitable farming is not a sufficient object in life but must be supplemented by social usefulness; that many country professions must be developed; and that good farmers are needed more than millionaires.

It is a broad-vision survey of a big question, with keen analysis of underlying conditions and solid common sense in proposed remedies.

WALTER S. TOWER.

University of Chicago.

Ball, J. Dyer. *The Chinese at Home.* Pp. xii, 370. Price, \$2.00. New York: F. H. Revell Company, 1912.

This book in few ways excels many of the works written before it on the Chinese. Some of the illustrations are the work of native artists and give a good idea of

the stage of artistic skill reached by them. The customs of the people are interestingly set forth; but in describing home conditions, we fear, the author has been influenced somewhat by the surroundings in which he is now enjoying "the quiet of English pursuits." One who has lived and traveled in China is tempted to say: he has confined his description of the streets, buildings and homes to those occupied by the gentry. Chapter VI, "John Chinaman Abroad," should be read and mentally digested. In it the reader may see himself as others see him. The horrors of infanticide are briefly told. The statements of this paragraph will prove an antithesis to the statement of Dr. DeGroot, in his book, "The Religion of the Chinese," to the effect that foundling hospitals have been established by humanitarian officials. What these asylums are the author graphically explains. Child labor is hinted at, but its enormity is left for some other writer to unfold. Those who think America is the birthplace of graft will change their minds after reading this book. Chapter XIX may be profitably read by students of economy, and especially by American housewives. The dangers to which foreign women who marry Chinese expose themselves are briefly set forth. We are glad the author has paid deference to the work and influence of the missionaries in bringing about reforms, but we are disappointed in that he has given but scant notice to the work done by the great number of Chinese who have been educated in the universities of America and England. These men are responsible for the present state of progress in China. On the whole, the book is informing and will prove to be good reading.

CUTHBERT P. NEWTON.

Crozer Theological Seminary.

Baring, Maurice. *The Russian People.* Pp. xix, 356. Price, \$3.50. New York: George H. Doran Company, 1911.

Discussions of Russia by foreigners, are usually unsatisfactory because they are written by casual travelers who cannot interpret what they see, or they assume that the reader is already familiar with the general background of Russian life, or the statements are colored by strong social or national bias.

Hon. Maurice Baring, the author of this volume, is especially fortunate in being free from these limitations and his chapters will on that account be welcomed by a large circle of readers. His long experience in the British diplomatic service in Russia, and his later activities as Russian representative of the London press, have given him an unusual insight into the national life. Maps showing the historical growth of the country, its soil formation, racial elements and political divisions make it easy to follow the discussion of unfamiliar facts.

The first fifty pages give a picture of the Russians themselves, of the physical character of the country, its agricultural wealth, its river systems and its industrial developments. Then a hundred pages give a brief review of Russian history with emphasis on the politics of expansion. But the chapters which will claim the attention of most of his readers come in the latter half of the book dealing with the internal economic and political problems of Russia since the emancipation of the serfs. The contrast between local autonomy and the

extreme centralization of the Imperial government is well brought out. The peculiar communal institutions of Russia from which the Socialists formerly hoped so much are shown in the process of breaking down. Industrial life with its mixture of blessings and misfortunes is playing an ever-increasing part in Russian life. Nihilism and the recent revolutionary movement have their roots in the attempt to raise Russia in a generation from the conditions of the middle ages to those of the twentieth century. The same feeling of unrest it is shown is beginning to make inroads upon the hold which the church still has on the people. But in spite of its defective organization and its formalism it is still true that religion welds in the mind and heart of the average Russian an influence approached nowhere else in Europe.

The chapters on present day Russia are excellently done but we have still to wait for a thorough study of the life and institutions of the great Empire of the North.

CHESTER LLOYD JONES.

University of Wisconsin.

Boutroux, Emile. *Science and Religion in Contemporary Philosophy.* Pp. xi, 400. Price, \$2.00. New York: Macmillan Company, 1911.

This is an excellent translation of a work destined doubtless to become a classic. Beginning with an introductory review of the status of religion and science from Greek antiquity to the present time, the author considers modern thought under two main heads: the Naturalistic Tendency and the Spiritualistic Tendency. Under the former he outlines the philosophies of Comte, Spencer and Haeckel; and devotes the concluding chapter of this part to a particularly interesting consideration of the contributions of psychology and sociology, in both of which religion itself becomes an object of science. Both substitute a consideration of religious phenomena for that of the objects of religion. Psychology fastens on the subjective aspects of religious phenomena. To resulting conclusions the sociologist objects. To him these are a tissue of sophisms; for the essence of religion is not to be found in the individual consciousness but in those social factors which thrust upon the individual "deeds or abstentions that are foreign to his nature." Feeling and belief are the echo in the individual consciousness of the compulsion exercised by the community on its members. In the author's view both psychology and sociology fall short of affording a full explanation of religion. Religion is "that subjective content of consciousness which scientific psychology thrusts aside in order to attend solely to the objective phenomena that are concomitant." As for the sociological explanation, no existing social organization could produce the religious attributes of the human soul. "At the root of all social progress is found an idea springing from the depths of the human soul."

Four chapters are devoted to the various phases of the spiritualistic tendency. The pragmatic phase, or philosophy of activity, is criticised on grounds of the necessity of a strictly intellectual principle for science and for religion itself. The views of Ritschl, Sabatier and others, are likewise critically handled. The author's own conclusion is that there is a necessary conflict between the spirit

of science and that of religion, but that from the tempering strife will spring an ampler, freer life. For science treats of the things without which man cannot live, religion of those without which life would not be worth while.

ROSSELL C. MCCREA.

University of Pennsylvania.

Boyd, William. *The Educational Theory of Jean Jacques Rousseau.* Pp. xiii, 368. Price, \$1.75. New York: Longmans, Green & Co., 1911.

This appreciative yet critical review of Rousseau's contribution to the progressive movement of modern education has especial interest and value for American readers. It is a clear analysis of the self-contradictory, yet self-complementary, message of the strange genius whose thought gave expression to a unique epoch in human development, and who became the most permanent record in literature of a phase of democratic ideal which embodied itself in the extravagances of the French Revolution and in the stately phrases of our own Bill of Rights. Perhaps there is needless repetition in the treatment of the main idea; but Prof. Boyd is a teacher, and knows well the value of the cumulative and recurrent touch. We recall no book which gives so sane and balanced a point of view which at the same time is so commendatory of Rousseau, and ranks him so high in the educational leadership of the modern world. The especial usefulness of the book to American readers lies in the fact that here in the United States we are trying out experiments in the "new education" which Rousseau first voiced in ideal, if he did not first lead in practical tendency. Prof. Boyd himself declares that "it is to the United States we must turn if we would see the re-incarnation of the Rousselian spirit at its best and at its worst," and he quotes Prof. James' arraignment of the "soft pedagogy which forgets the place of effort in life and education in the desire for interest" to give his statement weight. The immediate influence of Rousseau, as it is consciously perceived, can be seen here, it is true, in the "Child Study" movement, and in some elements of "Mother's Club" work, and in some of the more sentimental phases of the kindergarten movement. Yet anyone intimately and broadly acquainted with educational tendencies in America would be likely to qualify Prof. Boyd's remark by allusion to the fact that here we are consciously following Pestalozzi, Froebel and Herbart when we are emphasizing the individualistic elements in education rather than Rousseau; and following them where they most distinctly modify if not antagonize Rousseau. Here in the United States also we are now so under the mass pressure of effort toward environmental changes that the social and external elements in education threaten the very life of that effort to create a free and noble personality which constitutes the spiritual essence of the ideals of all these educational reformers. It may, therefore, be said that while in our country we are still trying many experiments along lines indicated by Rousseau and his disciples, we are also, with wide range of conscious or unconscious swing, already deeply immersed in the still newer and more confusing tendencies into which the modern industrial and political conditions have swept the school.

Perhaps few of those who have worked with children rather than with the theories about them would accept quite the position of leadership assigned

Rousseau by Prof. Boyd. The value of both Pestalozzi and Froebel to educational advance fibres upon a personal contact and study that one of Rousseau's faulty character and undisciplined temperament could not have. To agree with Prof. Boyd that the "supreme merit of Rousseau is that he brought about the Copernical change in educational thought and practice" surely requires the modification which is elsewhere furnished in the text of the book itself. With fine insight Prof. Boyd sums up the genius of Rousseau as "voicing the deep heart-yearnings of an unhappy generation coming to consciousness of its own state and finding that consciousness bitter." This will distinguish him for all time as a force to be known and justly estimated, rather than as a leader, for our time at least, in educational reform.

Each master change in the social ideal has had its necessary effect upon the ideal and method of education. And in order to understand why we wish to do thus or so with and for the children of a generation, in a particular country and condition, we must learn why the adults of that time and that country and that condition live and act in such or such a manner. It is as a key to the modern problems that Rousseau is most illuminating.

The chief value of a book like that of Prof. Boyd's, is that it calls renewed attention to the fact that all that is best in the modern "social movement" dates back to a morning prophecy of the worth and distinction of the individual. The tax-supported public school of America was brought to being by such faith as that of Horace Mann in "the infinite improbability of the human race," not alone through change of circumstance, but through development of personal power and character. While, as Prof. Boyd well says, Rousseau and many after him have thought of "education as a preparation for society but failed to see that education is also of necessity a preparation by society," we are now in danger of seeing the latter truth and ignoring the former. It is the special merit of Prof. Boyd's presentation of Rousseau's influence that it hints, if it does not fully expound, the present need for a deeper harmonizing of wider extremes of ideal than Rousseau's thought could grasp.

ANNA GARLIN SPENCER.

New York School of Philanthropy.

Bradford, Ernest S. *Commission Government in American Cities.* Pp. xiv, 359. Price, \$1.25. New York: Macmillan Company, 1911.

This book is one of a series in "The Citizens' Library of Economics, Politics and Sociology," edited by Professor R. T. Ely.

Part I traces the spread of the commission form and discusses in detail the agitation for and the salient provisions of the plans adopted, respectively, in Galveston, Houston, Des Moines, Cedar Rapids, Kansas, the states of the Upper Mississippi Valley, Texas and Oklahoma, Massachusetts, West Virginia, Tennessee and the South, and Colorado and the Pacific states. It also includes discussions of preferential voting and the City Managing Plan.

Part II discusses comparatively the essential features of the commission plan: The relative merits and provisions as to the small board, election at large, concentration of municipal authority, departmental responsibility; checks,

such as publicity, the initiative, referendum and recall; civil service, preferential voting and the limitations, objections and advantages of the commission plan.

In the appendix are given the preferential ballot provisions of the Grand Junction plan, the text of the Iowa law—the Des Moines plan—and an excellent list of references.

The author has used every available source for his information. Statutes, court decisions, newspapers, pamphlets, letters, periodical literature, commission charters, reports of commission cities, all have received able and proportionate attention. More than this the author has personally visited many of the leading commission cities and has astutely analyzed local situations and results. The work is scholarly and of eminent merit.

The author looks for the wide-spread adoption of the plan because of its simplicity, effectiveness and adaptation to modern municipal needs. He has examined results with care and overthrows the cry that is used when arguments fail—that the commission plan is still an experiment. He finds that it has aroused public spirit and self-effort and that it has and will lead to responsive and efficient government.

CLYDE L. KING.

University of Pennsylvania.

Brode, H. *British and German East Africa.* Pp. xiv, 175. Price, \$2.10. New York: Longmans, Green & Co., 1911.

Dr. Brode, for many years in charge of the German consulates at Zanzibar and Mombasa, gives us, in this small volume, a personal estimate of the progress and promise of two closely related tropical colonies. The story is told simply, and directly, and it will be a surprise to many readers to learn that these two colonies cover a region of about 700,000 square miles in area, say equal to our North Central States from Ohio to North Dakota and Kansas, and have a population of 15,000,000.

In this region of exceedingly great promise there are dense tropical forests in the plateau scarp and tall mountains; gold in the Tabora reef; copra and sugar cane at the coast, and mangrove swamps for cutch; sheep and cattle on the great plains, and ostrich farming begun; rice in the flat land round Lake Victoria; exceedingly fine prospects for cotton in an area half as large as that in our own southern states; coffee; rubber, both native and from transplanted Brazilian trees; sisal of the highest quality, with an available area larger than that in Yucatan; and oats, barley, wheat, apples and strawberries, in Uganda and other highlands.

It is good to know that the Germans have taken their science and ample education with them, and have established state schools quite generally, which "soon came into favor with the natives, after they had realized that no propaganda was to be taught." All the schools in the British protectorates are in the hands of the missionaries. Both British and German colonies have established agricultural experiment stations, and there is the most neighborly co-operation in every line, looking to the improvement of conditions in the colonies. The Uganda railway from Mombasa, and the Usumbara railway in the German colony, running inland from Daressalam, are of the highest importance in the

development of the region. There is good steamboat service on Lake Victoria, and regular lines of steamers, both English and German, between the colonies and Europe.

It is easy to believe that we are here witnessing the first stages in the making of two great nations.

J. PAUL GOODE.

University of Chicago.

The Cambridge Medieval History. Volume I. Pp. xxii, 754. Price, \$5.00.
New York: Macmillan Company, 1911.

The present work, planned by Professor J. B. Bury and edited by Professor H. M. Gwatkin and the Rev. J. P. Whitney, has long been a desideratum. Drawn up on the same general plan as the "Cambridge Modern History" and enjoying the co-operation of recognized specialists in each topic discussed, it will occupy a place to itself, as no comprehensive work on the Middle Ages satisfying the demands of modern scholarship exists at present in any language. The nearest approach to such a work is Lavis and Rambaud's "Histoire générale," where, however, but three volumes are devoted to the period which will here be treated in eight. The first volume of the present series covers the two hundred years from Constantine to Justinian and is divided into twenty-one chapters apportioned among twenty contributors. This minute subdivision, while satisfactory in the treatment of the Teutonic migrations, occasions a regrettable lack of continuity in regard to the ecclesiastical phases of the period.

In the first chapter, Professor Gwatkin, after discussing the proper line of separation between ancient and medieval history, takes up "Constantine and his City" and gives a general survey of his reign. Then comes a chapter on "The Reorganization of the Empire" by Professor Reid, where, after the dreary catalogue of imperial officials, follows the only adequate account in English of the financial administration and system of taxation in the later empire. Mr. Norman H. Baynes' account of "Constantine's Successors to Jovian" is followed by Principal Lindsay's discussion of "The Triumph of Christianity," which brings out, though with scarcely enough fullness, the essential syncretism of the new religion in the fourth century and the dying out of popular paganism through the absorption of many of its features by Christianity. The religious history of the Nicene period is completed by a chapter on "Arianism" by Professor Gwatkin, and another on "The Organization of the Church" by Mr. C. H. Turner, wherein the later conciliar organization and the origin of canon law are emphasized rather than the question of the origin of the episcopate.

Chapters VII to XVI are devoted to the barbarians and the empire. Under "Expansion of the Teutons" Dr. Martin Bang discusses their original home, their relations with the Kelts and Romans and their movements up to 378 A. D. Mr. Baynes gives us the history of the "Dynasty of Valentinian and Theodosius." "The Teutonic Migrations, 378-412," are described by Dr. Manitius of Dresden. Chapter X, "The Teutonic Kingdoms in Gaul," is divided between Professors Schmidt and Pfister, the former taking up the Visigoths to the death of Euric and the latter the Franks before Clovis with some account of their legal and political organization. To Professor Schmidt is also assigned the

Sueves, Alans, Vandals and the short section on Attila. One of the most original and valuable chapters in the book (Chapter XII), "The Asiatic Background," by Dr. Peisker of Graz, describes the physical conditions of Central Asia and the social and economic status of the Altaic Nomads. This chapter explains the causes of the various Asiatic invasions that affected Europe during the Middle Ages and concludes with some interesting theories as to the ethnic composition of the inhabitants of southeastern Europe at the present day. After a description of Roman Britain by the great authority in that field, Professor Haverfield, and a short account of the Teutonic conquest by Mr. F. G. M. Beck, Mr. Ernest Baker takes up the confused story of "Italy and the West" from 410 to 476. Then follows "Italy under Odovacer and Theodoric," from the well-known pen of Professor Maurice Dumoulin of Paris, and the purely narrative portion of the volume is concluded by a survey of the "Eastern Provinces from Arcadius to Anastasius" by Mr. E. W. Brooks.

The remaining five chapters are devoted to more general subjects—"Religious Disunion in the Fifth Century" by Alice Gardner, "Monasticism" by Dom Butler, "Social and Economic Conditions of the Roman Empire in the Fourth Century" by Professor Vinogradoff, "Thoughts and Ideas of the Period" by the Rev. H. F. Stewart, and "Early Christian Art" by Professor W. R. Lethaby. Of these, the chapters on Monasticism and Art, though full and accurate in detail, are disappointing as general surveys, being more encyclopedic than historical in their treatment; but the masterly study of Professor Vinogradoff will command the close attention of every student of the period.

From this survey it will be seen that the "Cambridge Medieval History" will prove an indispensable work to all interested in the Middle Ages. The principle of co-operative authorship secures the presentation of the latest researches on each topic, and to the general arrangement and divisions little objection can be raised at the present stage. The bibliographies of the various chapters are, however, open to severe criticism, not so much on the ground of contents, for, though there are some important omissions, the titles have been carefully selected, as on account of the lack of uniformity in citation and the careless proof reading. It is especially irritating to find such a variety of usage in the capitalization of book titles. It would seem that either the English method should be followed throughout, or, what is far more desirable, the practice of each country adhered to in referring to works appearing in its language. This, however, is not the case, and the utmost confusion prevails throughout in the bibliographies prepared by the English contributors. Needless to say the practice of the continental contributors conforms to a stricter standard, though even here there is some confusion in referring to English works which should not have escaped the editors' eyes. Other evidences of carelessness are to be found in the misspelling of foreign words, the separation of compound words, grammatical errors, etc. A page of the bibliography with corrections noted on the margin looks like a first galley proof ready to be returned to the printer. It is to be hoped that the editors will exercise more care in the corresponding portions of subsequent volumes and enforce a uniform method of citation.

A. C. HOWLAND.

University of Pennsylvania.

Chamberlain, Lawrence. *The Principles of Bond Investment.* Pp. xiii, 551. Price, \$5.00. New York: Henry Holt & Co., 1911.

The author of this volume is associated with Kountze Brothers, Bankers, New York, and is, in addition, staff lecturer on finance in New York University, School of Commerce, Accounts and Finance. This volume is the outgrowth of his work in the latter institution and embodies, of course, his experience in the banking business.

The book is divided into four parts—the first dealing with general questions affecting investments, such as the channel of investments; the elements of an ideal investment; the relative advantages and disadvantages of stocks, bonds, mortgages and listed and unlisted securities. The second portion of the book, which is, by far, the best part of the volume, deals with civil loans. The discussion of the investment considerations surrounding United States, state, county and tax district bonds is the most lucid, thorough and complete presentation of the subject thus far offered to the reading public. The author's experience, from the nature of the business of his firm, has necessarily been confined largely to this class of investments. The only criticism which can be offered to this portion of the work is that the knowledge of the author is so great about certain matters as to be embarrassing to him in confining his discussion to a necessarily limited space.

The weakest portion of the book is Part III, dealing with corporation loans. The discussion covers railroad bonds and equipment trust obligations, steamship, street railway, gas, water, timber and reclamation securities. The author's analysis in many places is weak and confined to generalities of little practical value in guiding an investor or a student in understanding the fundamental principles and tests to which an investment should be subjected. It is to be regretted that this portion of the volume does not maintain the high standards set in the second part, or which is reached in the final portion of the book.

Part IV deals with the Mathematics and Movement of Bond Prices. While nothing now is contributed to the subject, yet the lucid and simple style of the author and his thorough command of the questions under discussion, enable him to present this subject, necessarily difficult to the novice, in a manner easy of comprehension.

THOMAS CONWAY, JR.

University of Pennsylvania.

Davenport, Charles B. *Heredity in Relation to Eugenics.* Pp. xi, 298. Price, \$2.00. New York: Henry Holt & Co., 1911.

For some years the author has been with the Carnegie Institution as Director of the Biological Laboratory at Cold Spring Harbor, Long Island, and has also acted as Secretary of the Eugenics Section of the American Breeders' Association. One of his most important tasks has been the collection of material bearing on the inheritance of family traits. After a brief introductory chapter on our present knowledge of cell life and growth, about one hundred and fifty pages of this volume are filled with family charts and descriptions showing how various traits descend generation after generation. So many different characteristics

are discussed that even a digest is here impossible. It is the most comprehensive and important collection of facts in this field yet published in America and should be most carefully studied.

In this book the author presents not only his own work but also much elsewhere issued. This means that it is of unequal value even though Dr. Davenport seeks to interpret and explain. For instance, his statement on page 83 that "a strong heredity bias towards alcohol runs through not a few families of the United States" may be true, but the evidence offered is meager and inconclusive, nor is the author certain apparently just what he thinks this bias is. It still remains uncertain how far we can analyze the condition we call neuropathic. With respect to some other conditions (e. g. feeble-mindedness) the evidence is overwhelming and the social obligation perfectly clear. In the main a definite plan of charting descent is followed, but some illustrations from other writers are given in the original form. To have modified these to correspond to the standard would have been better, I think.

In chapter four, *The Geographical Distribution of Inheritable Traits*, the author deals with various American communities. Inbreeding is not bad *per se* but the danger of defects is increased. The author well says: "In the multiplication of negative and positive traits we would see this plain difference—that negative traits multiply most in long established and stable communities where much inbreeding occurs, while positive traits are increased by emigration, as a fire is spread by the wind that scatters fire brands."

Chapter V is devoted to *Migrations and their Eugenic Significance*. From Europe have come strong as well as defective elements. Sometimes a wholesale movement of the strong has resulted in local degeneration in Europe. The various nationalities are separately discussed but it must be confessed that the author's comments are of the sort that do not rest on special study. He feels that the economic problems of immigration are more or less self-regulating but that we are somewhat neglecting the fundamental biological side. Our selection cannot be based on race, but on individual characteristics.

The Influence of the Individual on the Race is the title of the sixth chapter. Formerly individual characters were thought to be of minor importance because likely to disappear in later generations. Now that we know that such unit characters are permanent the individual has new significance. The descent of a number of American families prominent either in good or bad deeds is given. The question that must arise is: How much of this prominence is due to physical peculiarities—how much to social situation? With our present standards of measurement not even Dr. Davenport can make satisfactory answer.

In Chapter VII, *The Study of American Families*, we are told of the growth of interest in genealogy, and of some of the results to be expected from careful study.

Chapter VIII, *Eugenics and Euthenics* deals with the old problems of heredity and environment. Dr. Davenport points out that disease, say tuberculosis, raises the question of immunity as well as that of bacilli. We are too prone to jump to conclusions. Our legislatures are far more inclined to pass stringent laws than to vote money for investigations. Dr. Davenport is a confirmed Mendelian. Even admitting this, there will be many who regret that

on page 257 he apparently questions the wisdom of prohibiting the marriage of the feeble-minded. He may "well imagine the marrying of a well-to-do, mentally strong man and a high-grade feeble-minded woman with beauty and social graces which should not only be productive of perfect domestic happiness, but also of a large family of normal happy children." It is to be noted that none of the families presented in the book shows such results and that so far as evidence is concerned they remain purely imaginary. This sentiment is apparently in square opposition to the standpoint of most of the book. What America now needs is to recognize the certainty of a goodly percentage of feeble-minded in such marriages not the possibility of normality.

No person monopolizes good or bad traits. When we know more, we shall get better results. Society should study its physical make-up. The volume closes with a few words about present eugenic studies and an excellent bibliography.

Dr. Davenport has produced a work of great significance. The problems it raises are by no means all settled by the evidence offered. These questions are fundamental and it is pleasant to recognize that they are coming into their own. May we hope that this book is but the forerunner of many more.

CARL KELSEY.

University of Pennsylvania.

Dickerson, Oliver M. *American Colonial Government, 1606-1765.* Pp. 390. Price, \$4.00. Cleveland: Arthur H. Clark Company, 1912.

The scope of this monograph is indicated by the sub-title "A study of the British Board of Trade in its relation to the American Colonies, Political, Industrial, Administrative." The author has made extensive researches in the manuscript records of the British Board of Trade and the Privy Council and in printed colonial sources. The results here presented are of value, not only for the history of this organ of imperial control, but also for the light cast upon various phases of American colonial and English institutional development.

The first third of the book is devoted to the organization and development of the Board of Trade. By a study of the personnel of the board and its relations to other administrative authorities in England a close connection is shown to exist between these two elements and the marked variations in the activity and influence of the board at different periods. It appears, furthermore, that after 1748 the board was more active and efficient under the presidency of Halifax than has been generally supposed. With regard to the diversely named committees of the Privy Council dealing with colonial affairs the interesting conclusion is reached that they are all one and the same; namely, a committee of the whole council designated by various titles.

The remaining chapters contain an account of the imperial and colonial policies of the board, their application to the American colonies, and the reasons for their success or failure. Here such topics are treated as trade relations, defense, Indian relations, and colonial expansion. The use of the royal veto on colonial legislation receives an especially illuminating discussion. Copious

footnotes, containing much illustrative material, a critical bibliography of books used, and an index complete a work which is a substantial contribution to the literature of the subject.

W. E. LUNT.

Bowdoin College.

Dingle, Edwin J. *Across China on Foot.* Pp. xvi, 446. Price, \$3.50. New York: Henry Holt & Co., 1911.

Most countries have now been visited by tourists so often that they have become places in which there still lies interest for the traveler but no great chance of reaching regions unexplored. China, especially Western and Northern China, is an exception. Mr. Dingle's journey takes him through a region little known even to those most familiar with the Far East.

After a brief description of his trip up the Yangtze with its wonderful gorges, the author gives us practically the diary of his overland journey through the great rich inland provinces, Szechuan and Yunnan to Bhamo in British Burma. Most of this journey was taken on foot though "to save his face" Chinese custom demanded that a chair be carried by the attendants to show that travel afoot was not to be explained by lack of willingness and ability to pay for the cost of more luxurious travel.

Szechuan with its waving poppy fields, rich wheat harvests, and beautiful scenery furnishes a striking contrast to the squalor in which its people live. Wealth for the common people is unknown, comfort rare and cleanliness conspicuous by its absence. The misery of the people and the richness of the land stand in striking contrast.

Yunnan gives contrasts of the old and the new especially in mining. The old hand methods are giving way to German and English machinery. Already the consequences which will come with the approaching industrial revolution are beginning to make themselves evident. Southwest Yunnan the author found almost unvisited by white men. The description of the native tribes and their peculiar customs is the most interesting part of the volume. The Li-su, marauding tribes of Western Yunnan and the Shans and Kachins near the Burman border are all but untouched not only by Western but by Chinese civilization.

Mr. Dingle's book is not scientific. He makes no claim to being able to interpret what he sees in its historical relations but the descriptions are evidently by one who has a peculiar gift of appreciating what he sees and of interpreting it by contrast with more familiar western customs. The graphic word pictures are supplemented by over a hundred excellent reproductions from photographs.

No one can fail to find this book entertaining. It says the first word about some things and the last word about none, it leaves one's interest, as the author evidently intends shall be the case, not satisfied but aroused.

CHESTER LLOYD JONES.

University of Wisconsin.

Earp, E. L. *The Social Engineer*. Pp. xxiii, 326. Price, \$1.50. New York: Eaton & Mains, 1912.

The author is Professor of Christian Sociology at Drew Theological Seminary. Dr. Earp is known as one of the most active and practical teachers in the Methodist seminaries, and his earlier work, "Social Aspects of Religious Institutions," received favorable comment. He feels that within the church just now are groups anxious for social service who want something to guide them in their studies and this guidance he seeks to furnish.

"All human life to-day is being socialized in consciousness and in activity." This quotation might well stand as the motto of the book. This involves constructive programs, not merely relief. The great weakness in the church is the lack of social engineers. "We need a type of man who knows the value of social machinery, and how to run it, and is willing to stay on the job." The volume is divided into two parts: (1) *The Social Engineer in the Making*, and (2) *The Social Engineer at Work*.

The first part is really a discussion of social theory largely in terms of Cooley and Giddings. Social Consciousness, Organization, Classification, Efficiency, Progress, Friendship, etc., are the main topics. "In religious education we have been for years drawing out of the treasure house of knowledge the truths of the Word of God for human conduct, but for some reason we have not gotten the results in achievement for the human race that all this teaching would demand." The Sunday School has failed to connect its teaching with real life. The church should inspire for leadership. The peril lies not in outer opposition but in the inner failure to meet the opportunities for service. The church fails to attract the multitude, its "spiritual death rate" is too large, it fails to lead present social movements. These, thinks Dr. Earp, are its greatest perils.

Part II is more concrete. Social service involves: "those serious altruistic activities of Christian people that help somebody out of difficulty and better the moral tone of the community."

The chapter headings indicate the ground covered, "How to Work the Specific Fields of Social Service," "Socialized Charity," "Team Work for the Community," "The City Problem," "The Social Settlement," "The Social Causes of the Boy Problem," etc. These chapters are characterized by a good common sense attitude and teem with valuable suggestions.

Naturally the main theme is the part the church may play. Naturally too the author is careful to emphasize that the newer viewpoints conserve the value of the old. To a large extent, even the old terminology is preserved and this is very wise when one considers the conservative background of the average man Dr. Earp is trying to reach. It is difficult to see how the most conservative could object to his programs, and yet his criticisms are keen.

The chief cause of the "spiritual death rate" is "neglect of childhood by the religious social groups." More provision must be made for the young. Our Christian resources must be conserved. In parts of cities and in some rural districts the church has lost ground often because of lack of adaptation. Our resources are largely wasted. Idle buildings, over-churched towns are a reflection on Christians. These problems must be studied and solved. A new "Social Emphasis in Education" is coming.

The test of a text-book is the reaction of this class. Apparently Dr. Earp has produced a volume that will stand the test. It is to be hoped that many groups will make use of it.

There is a good index and a bibliography. When another man prepares a bibliography one is usually surprised at certain omissions and certain inclusions. Here I would only mention that to me it seems strange that *THE ANNALS* is not mentioned among the periodicals.

CARL KELSEY.

University of Pennsylvania.

Ellis, H. *The Problem of Race-Regeneration.* Pp. 67. **Saleeby, C. W.** *The Method of Race-Regeneration.* Pp. 64. **Newsholme, A.** *The Declining Birth-Rate.* Pp. 60. Price, 50 cents each. New York: Moffat, Yard & Co., 1911.

The subject of race control—eugenics—has been agitated in England since Galton wrote his "Hereditary Genius," but the active propaganda for negative and positive eugenics arose with the present generation. The leaders in this eugenic propaganda movement are represented in the series of tracts which are announced under the general title "New Tracts for the Times."

The three tracts under review are essentially similar in viewpoint, yet so skillfully edited that they do not conflict in any sense. The general problem of race regeneration is stated by Havelock Ellis in terms of heredity and of environment. After analyzing the numerous nineteenth century attempts to improve life through regenerations of the environment, Dr. Ellis writes a chapter headed *The Problems of To-day*. These he considers, first Sanitation, second Factory Legislation, third Child Education in its broadest sense, fourth a guarantee of sound parenthood. "The Next Step in Social Reform," as might readily be imagined from the above outline, is, therefore, the education of the public in the problem of eugenics. Thus Dr. Ellis has thrown all of his emphasis away from the problem of income to the problem of increasing the standard of individual efficiency. Although the problem of income does not enter into the discussion which he has outlined, he should certainly have given it a passing mention in connection with his analysis of present day problems.

Dr. Saleeby's well known advocacy of a militant form of eugenics lends special interest to his discussion of the method of race regeneration. Three things, he maintains, are essential: First, we must believe that race regeneration is possible; second, we must believe in science; and third, in the nobleness of the cause of race improvement. Starting with this propagandic attitude, the author classes eugenics as primary and secondary. The primary problems deal with "Nature" or "Heredity;" the secondary problems with "Nurture" or "Environment." "Natural Eugenics need not be discussed here," writes the author, "because its various aspects are in constant discussion everywhere" (p. 6). Therefore, he confines himself to an analysis of the positive and negative methods of eugenics. Those who are familiar with Dr. Saleeby's "Parent-hood and Race Culture" will find little additional material in the present volume.

"The Declining Birth Rate" is a compilation of birth-rate statistics together with a brief analysis of the causes and effects of the present high birth-rate in

low status families, and low birth-rate in high status families. Unfortunately, no adequate references are made to source material, an omission which seriously impairs the value of any statistical work.

There is a danger ever present in social discussions that the individual member of the community will be overlooked or entirely forgotten. Enthusiasm for the group may easily convert the eugenic program into a science as dismal as classical political economy, and it behooves the editor and the authors who are preparing subsequent volumes in this series to remember that society still consists of people.

SCOTT NEARING.

University of Pennsylvania.

Ferriman, Z. D. *Turkey and the Turks.* Pp. ix, 334. Price, \$3.00. New York: James Pott & Co., 1911.

No country of Europe is less understood or so much misunderstood as Turkey. The author seeks to remove some of our misapprehensions. Turkey as a government full of decay and corruption is not discussed, but a picture is given of the varied national life and a charming description of the Turkish family.

Many nationalities help to make up what Westerners call the nation, in fact there are so many racial and religious elements that Turkey must be considered as a mosaic of hundreds of nationalities often as widely separated in history and customs as the English and Russians. Still there are common possessions which are plainly Turkish in the broader sense. The greater portion of three hundred pages is taken up with a detailed description of the family life. We have inherited a tradition that the Turkish family is polygamous, that the wife is considered soulless, that the moral standards are low and the husbands are tyrants. This is all far from the fact the author assures us. Polygamy though legal is unusual and not only because of its expense, since each wife must be provided a separate establishment, but because it is unfashionable. The average family is one in which the wife enjoys quite as favorable a position as in western countries, the legal control of a wife over her property is greater than it was until recently in England and in general the family relations *de facto* are quite as peaceful as in Christian countries. Yet custom makes for a contrary appearance. Marriages are still made not by the preference of the parties but by the choice of their respective families and the male acquaintances of the wife are still confined to her immediate family. The seclusion of the Turkish home is still undisturbed—least of all by any wish of its women members.

The ceremonies of funerals and church ritual are described in detail. Domestic service and the management of the household, cooking, dress and entertainment receive due attention. Domestic slavery in its historical phases and its present decline is described. Nominally the institution no longer exists, but the abolition of the slave dealers' marts has not in fact brought the abolition of slave dealers. What slavery does exist is of a mild sort—resting often on the wish of the enslaved.

One of the most interesting chapters deals with the Turk in his relation to his faith. Mohammedanism is a man's religion—the only one of the great

faiths which finds its chief support among the male population. Gradually by interpretation and custom, "adet," the rigid rules of the Koran are being modified to suit modern conditions, and the forms still observed have a meaning for the Turk for which many parts of our own rituals have no counterpart. The faith is a faith that makes faithful. Its teachings of cleanliness, honor, and duty are powerful influences in keeping before the people standards that make for a strong national life.

CHESTER LLOYD JONES.

University of Wisconsin.

Fisher, Herbert A. L. *Political Unions.* Pp. 31. Price, 35 cents. New York: Oxford University Press, 1911.

De Fronsac, Viscount. *Liberalism and Wreck of Empire.* Pp. 91. Price, 50 cents. New York: Neale Publishing Company, 1911.

These pamphlets both devote some space to political unions within the British Empire. Beyond that they have nothing in common.

The first is the Creighton lecture delivered in the University of London. Mr. Fisher in his usual brilliant style gives a descriptive survey of political unions. Beginning with an account of the circumstances attending the formation of the South African Union, he proceeds to a consideration of the causes of the success or failure of various unions, and concludes with observations on the organization and working of some of the most important. As his exposition necessarily includes many generalizations, occasionally a statement appears that is somewhat too sweeping. It may be doubted if it is yet quite true in the United States that "if the work [of framing the constitution] had to be done over again now, it is improbable that any American statesman or thinker would construct an executive so independent of the legislature, or a legislature so independent of the executive, or would assign to the several states of the Union so large a measure of autonomy as that which they still enjoy" (p. 21). But such instances are comparatively few. The general result is both stimulating and suggestive.

The second pamphlet is a diatribe against liberalism in general and the imperial policy of the English Liberal party in particular. The nature of the contents is sufficiently indicated by the writer's conclusion, that the only remedy for the evils produced by popular government in England is an armed invasion led preferably by the German Emperor, who, because of his theory of divine right, would presumably deprive parliament of its usurped executive authority. The discussion is acrimonious, and the views expressed are so warped by prejudice as to be fantastic. Otherwise it is not distinguished from the great mass of partisan literature evoked by the recent constitutional crisis in England.

W. E. LUNT.

Bowdoin College.

Forbush, W. B. *The Coming Generation.* Pp. xix, 402. Price, \$1.50. New York: D. Appleton & Co., 1912.

The author makes the first virile attempt to popularize the concept of posteritism. To him the coming generation is a real group of individuals who, trained in

the activities of the present, will shape the world of the future. His book he describes as "the first endeavor to furnish in a single volume, a short, readable account of all the forces that are working for the betterment of American young people" (p. vii).

Starting with the home as the fundamental social institution, he asks the pertinent question, "why is it that, since parenthood is the business at which most of us spend three-fourths of our time, the state should allow it to be taught only to spinster school teachers?" Obviously such a situation is intolerable. The knowledge of the rights and duties of parenthood, of eugenics and of the first principles of education is essential to every one in a democracy. Then too, there is another side to the problem. It is not enough that children should be trained for parenthood, they must likewise be prepared for citizenship, and "inspired to hand down the torch, to endeavor to perpetuate civilization, to make the world better for their children and their children better for the world. This question is the latest thing in education and in religion" (p. 376).

The author's viewpoint is keen and progressive. His authorities are sound, yet his book fails in the purpose set forth in his preface because he has not successfully correlated the factors involved in the shaping of the coming generation.

SCOTT NEARING.

University of Pennsylvania.

Geil, W. E. *Eighteen Capitals of China.* Pp. xx, 429. Price, \$5.00. Philadelphia: J. B. Lippincott Company, 1911.

History to be interesting, we have been told, should read like a romance. This book meets the condition. In describing the Eighteen Capitals of China, the author has written the history of the Chinese Empire with all the charm and grace of a romance. The forces that have molded and shaped the politics, literature, arts, religions and the social institutions are forcefully and interestingly discussed. The keen diplomatic traits of the Chinese officials are clearly demonstrated. The vices and the virtues of the people are shown. Besides containing a wealth of historical data, the book abounds with Chinese folk-lore, excerpts of literature, and poetry. At the top of almost every other page is a Chinese maxim in Chinese and English. This collection adds greatly to the already high value of the book. In the light of the present situation in China one of these maxims is significant, "Even a tile will turn some day." The real causes that have changed affairs in China are described in this book. The Old and the New China are strikingly contrasted. The heroic and noble works of the medical missionaries and the Chinese will stimulate to greater deeds all humanitarians. The book is beautifully illustrated. It contains more than one hundred and thirty photo cuts. So many of the written characters have been explained that we suggest to all contemplating the taking up of the Chinese language as a study that they first read this book. It will help them "to breathe the atmosphere."

CUTHBERT P. NEWTON.

Crozer Theological Seminary.

Gephart, W. F. *Principles of Insurance*. Pp. xv, 313. Price, \$1.60. New York: Macmillan Company, 1911.

In this book a first attempt has been made to give a comprehensive survey of the field of personal insurance in a form that is available to the student. The author states in the preface that it "is primarily intended for the student in the classroom and for the general reader who wishes to know something definite about insurance." The literature of life insurance is so voluminous, so scattered, and much of it so technical that for the person who approaches the subject the first time the task of getting any clear concepts is, to say the least, a difficult one. The book is therefore opportune.

As might be expected the larger part of the book is devoted to old-line insurance. The earlier chapters on history, theory of insurance, selection of lines, and company organization are excellent examples of how a great amount of material may be condensed into small space. Little is omitted that is of importance. The discussion of selection of lives is a case in point. The hazard as affected by the company's selection, by selection on the part of the insured, and the methods of treating sub-normal hazards are each dealt with in turn. An interesting touch which shows that the author has his finger on the pulse of the present and is something more than a scholarly recluse is his discussion at the close of this chapter on conservation of life and the relation of life insurance companies to the movement.

The two chapters on premiums and policies leave much more to be desired. The attempt to confine the bulk of the actuarial side of life insurance to twenty pages might be defended on the basis of a desire not to emphasize this phase of the subject for beginners. But is not an intimate knowledge of policies one of the most important things for the student, and can the subject, therefore, be treated adequately within the limit of twenty-eight pages? The treatment of this subject seems entirely too meager.

One of the most interesting parts of the book is that dealing with insurance of the wage-earner. No attempt has been made here to take sides on any of the mooted questions dealing with compensation, liability, or state insurance, but the subject as a whole has been outlined with amazing thoroughness, and the logic of facts is sufficient to pass judgment on some topics—for instance, the status of employers' liability laws in the United States.

If a general criticism of the book might be made it would be that an attempt has been made to put within three hundred small pages a subject, any adequate treatment of which would require at least twice that much space; and a second fault, following from the same brevity undoubtedly, has been the failure to include a number of policy forms, of which there are hundreds and which are so necessary in the study of life insurance. It may be suggested, however, in view of the attitude of most publishers at the present time, that these are not faults that can be charged against the author. The great excellence of the book lies in its logical classification and, therefore, in its ready availability to the student. This is all the more noteworthy since the author had no precedents to follow.

BRUCE D. MUDGETT.

University of Pennsylvania.

Goodnow, Frank J. *Social Reform and the Constitution.* Pp. xxi, 365. Price, \$1.50. New York: Macmillan Company, 1911.

This volume, the Kennedy Lectures for 1911 in the New York School of Philanthropy, is the seventh in the American Social Progress Series. Its primary purpose is to state the principles applied by our state and federal courts to current social reforms and to ascertain to what extent the Constitution of the United States, and, more important, the decisions reached thereunder, are a bar to the adoption of modern methods of coping with economic, social and political problems.

The author discusses, with astuteness and incisiveness, and with the care of a constitutional lawyer, the judicial precedents and the resulting judicial avenues and bars to social progress. The more important problems thus discussed include government ownership, regulation and aid; the power of Congress to regulate navigation, transportation and other commerce, or to prohibit commerce save when conducted under congressional regulations; the power of Congress to charter interstate corporations and its possible power over the private law of the United States; the constitutionality of other political and social reforms.

One of his most interesting conclusions is that, by passing a factory or labor code, whose observance would be necessary by all manufacturers desirous of engaging in interstate commerce, Congress could practically banish the worst of labor conditions. He shows that Congress has full constitutional power to create a system of interstate commerce under complete federal control, banish all distinctions between inter- and intra-state commerce, include within the federal system the manufacture or other production of goods to be passed in interstate or foreign commerce, and protect this system in all its details from any species of state interference. He finds that many political and social measures which many now believe to be absolutely necessary to a permanent solution of our social and economic problems are probably precluded from adoption because of the attitude taken by our courts. Among these measures are old age and workingmen's insurance when the recipient is not actually a pauper; the regulation of hours of adult male labor in any but the most utterly harmful trades; and the effective regulation of the use of urban land.

The book cannot but make one ponder over the problem as to why our courts, whose decisions have been passed on a study of precedents and not sufficiently upon a study of economic and social conditions, whose decisions have usually lagged at least a quarter of a century and often two centuries behind economic needs, should be allowed to close to the American people the avenues open to other peoples or avenues Americans may themselves devise, to meet changing economic and social conditions with progressive and efficient means. Why should social legislation for the twentieth century be limited by judicial norms propounded in the eighteenth century? The book points to the need of socializing and modernizing our courts, constitutions, and juridical conceptions to the end that the courts may not forever take unto themselves undue sovereign powers, thereby thwarting the will of the modern state. There is eminent need for making our courts as well as our legislatures and administrators responsive

to the sovereign will of the people. Parliamentary government to that extent we must have.

CLYDE L. KING.

University of Pennsylvania.

Goodrich, J. K. *The Coming China.* Pp. xx, 298. Price, \$1.50. Chicago: A. C. McClurg Company, 1911.

The rapidity with which literature is being produced in order to record the changes now taking place in China is probably only exceeded by the changes themselves. Among the informed no one speaks to-day of China as the great static nation. No one charges the Chinese with being non-progressive. Changes have been taking place so rapidly as almost to threaten the solidarity of the Celestial Empire. The task that now confronts the educated group of Chinese is not one of instituting new movements but of giving intelligent direction to the modernism that is sweeping the country like a contagion.

The present volume throws a flood of historic light upon the situation. The author has sought diligently to explain the course of events. Beginning, in the introduction, with a narration of the changes which he has observed since first he went, forty-five years ago, to reside in Swatow, "one of the smallest, most conservative of the treaty-ports," he describes the attitude of the West toward a people whose ideas and institutions were not understood and the consequent creation of the hostile attitude of China toward the "Foreign Devils." The internal history is narrated from the origin of the people in the highlands of Western Asia, through their subjugation of aboriginal populations, the dynastic regimes, the rule of the Mongol and the Manchu to the present possibilities of dynastic change, which, in view of present hostilities, is an exceedingly significant prophecy. "China has now thrown off so much of her ten thousand years' accumulated stagnation and lethargy as to entitle her name to be coupled with the active, progressive, 'hustling' America; the unchangeable has been transformed into the changing; it is no longer military effort to force open doors that the keepers would still bar and bolt—or punitive missions of allies to extort compensation for alleged outrage; but the conquest is now to be one in which the Chinese themselves are to be as active in overthrowing their own obsolescent institutions as are the one time 'outer barbarians.' Furthermore, the radical changes of the past ten years which have almost startled the western world, the author regards as merely suggestions or prophecies of stupendous, almost cataclysmic changes that are soon to follow.

The "Yellow Peril" the author regards merely as a bogey of "Undeveloped China." The coming China with a completely reformed government, system of education, commerce, industry and army will have likewise a transformed national conscience which will make for international peace and stability rather than war. "If China is to be like America in certain ways, how can she avoid approximating us in all? If there are to be railways, inland navigation, post offices, factories, and all the concomitants of advanced life, the blessings must be paid for; the standards of living must be raised, so that the dreaded com-

petition either disappears entirely or fades away into a dim future, when China has raised herself at home quite up to our standard." The entrance of the United States into the Far Eastern Arena is regarded as conducing to the better understanding and mutual advantage of both China and the United States.

The book is a welcome addition to the rapidly growing literature that seeks to explain this most misunderstood nation of the world.

J. P. LICHTENBERGER.

University of Pennsylvania.

Lindsay, Forbes. *Cuba and her People of To-day.* Pp. xii, 329. Price \$3.00. Boston: L. C. Page & Co., 1911.

This volume, with its soft, cream wove paper and its fifty superior full page sepia illustrations, is a beautiful example of the bookmaker's art. But, better than this, is the study Mr. Lindsay gives us of the natural resources and economic conditions of modern Cuba. The style is simple and direct, yet it carries conviction with it, and a well tempered enthusiasm.

Three or four quotations may be given, which show that Mr. Lindsay has gone to the bottom of his subject. "Here is a country, small in extent, it is true, but as rich proportionally in natural resources as any in the world. It exports over \$100,000,000 worth of the products of the soil annually. Yet less than half of its productive area is turned to account; and of its cultivated tracts only a small proportion is subjected to intensive treatment. Bad government and ill-judged commercial policy have retarded the development of the country which, under favorable conditions, might to-day be producing five times its output, and supporting a population five times as great as that which it has. . . (Cuba has an area of 44,000 square miles, and a population of 2,000,000.)

"The economic condition of Cuba is as unfavorable as possible to the welfare of its population. Foreigners own practically everything in the country. The Island is exploited for the benefit of everyone but the natives. . . .

"The country that produces but one great staple by the agency of slave labor, lays itself under a curse that will be felt long after the conditions have changed. For well nigh a century sugar-cane has been the one chief source of Cuba's wealth, and it has cast a blight upon everything else. The sugar industry has exercised a detrimental influence upon the material welfare, morals, and health, and the independence of the people in general. . . The only outlook for the Cuban is to serve as a hired man."

"A country may be greatly prosperous, and the mass of its people be miserable in the extreme. Mexico is an example in point. Cuba is another. . . ."

"On the *guajiro* (peasant) falls most heavily the burden of supporting the most expensive and extravagant government in the world. This because that government dare not bear too hardly with taxation upon the great corporations and wealthy property owners. . . ." "Large tracts of land that are held by their wealthy owners at high figures, are exempted from taxation entirely."

This is the story of Cuba in a nutshell. One of the healthiest lands on earth, her death rate is next to the lowest in the list of nations; with a rich soil, and a climate inviting the production of every tropical commodity; producing even now, one-fourth of the world's cane sugar, and one-sixth of the value of the

world's tobacco; yet hopeless, so far as the production of an independent manhood and a free government are concerned.

J. PAUL GOODE.

University of Chicago.

Winter, Nevin O. *Argentina and Her People of To-day.* Pp. xiv, 421. Price, \$3.00. Boston: L. C. Page & Co., 1911.

The author of this volume is already well known for his similar works on Mexico Guatemala and Brazil; but in this latest work he has surpassed any of the earlier ones. The plan of the book differs very little from the others, separate sections being devoted to leading features, industries, activities and institutions with much to say about the people and their life.

Two especially good chapters describe the metropolis and the rural sections, giving thereby a sharp contrast of the two sides of Argentina. In these chapters the author shows plainly that he has been close to the real life of the country and has seen it both as an outsider and as it is for the Argentine. Realism is one of the chief merits of the book in all its parts.

Here and there, perhaps, an occasional statement of too optimistic character has crept in, due evidently to the effect of such apparent boundless possibilities for development in many ways. But in general a very conservative attitude is maintained. For this the author is to be commended.

Of the many books on this country the reviewer knows of no one which puts the reader more closely in touch with Argentina as it is than does this volume. Many very excellent illustrations and a good map supplement a delightful text.

WALTER S. TOWER.

University of Chicago.

REPORT OF THE ANNUAL MEETING COMMITTEE

The most difficult problem confronting your committee is the selection of the general topic for the Annual Meeting. In order that adequate preparation may be made it is necessary to select this topic nearly a year in advance, and the committee must, therefore, attempt to forecast the subject upon which the attention of the country will be concentrated at the time the Annual Meeting is held. The committee was particularly fortunate in the selection of the topic this year. At the time the sessions were held the subject of "Competition and Combination in Commerce and Industry" was in the foreground of public discussion. The invitations sent by the Academy to the governors of the states and to the officers of national trade and commercial organizations met with a most gratifying response. At no time in the history of the Academy has our Annual Meeting assumed such a distinctively national character.

It is impossible for your committee adequately to express its appreciation to those who participated in the sessions, and also to the large number of persons serving on special committees, who contributed their services to the success of the meeting. The Academy is under special obligations to the chairman of the local reception committee, the Honorable Charlemagne Tower, as well as to all the members of this committee. We also wish to express our obligation to those who contributed so generously toward defraying the expenses of this Annual Meeting. During the period of the Annual Meeting the courtesies of the University Club, the Union League, the City Club and the Acorn Club were extended to out-of-town members and guests of the Academy. For these courtesies we desire to make due acknowledgment.

The proceedings of the meeting are fully set forth in the course of the volume. There were, however, a number of brief introductory addresses which the committee desires to record in this connection. At the opening of the Annual Meeting, the President of the Academy, Dr. L. S. Rowe, extended the following greeting to the delegates and members:

"In opening the sixteenth Annual Meeting of the Academy, I desire to extend to the delegates from the various states and from trade and commercial organizations a hearty welcome on behalf of the Academy. It is a gratifying fact that at this Annual Meeting we have had a most enthusiastic response from the governors of our states, as well as from the officers of national commercial and trade organizations. Official delegations have been appointed by the governors of thirty-four states and by forty-four trade and commercial organizations. To one and all of the delegates I wish to extend a hearty welcome. Let me also take this opportunity to express to the governors of the states represented and to the officers of commercial associations the sincere appreciation of the Academy for their co-operation at this Annual Meeting."

At the session of Friday evening, March 29, Stuyvesant Fish, Esq., the presiding officer, said:

"I shall try to merely preside—it is the only function I have. It is always

a pleasure to come before this audience in Philadelphia, as I know by long experience that the only thing I have to do is to introduce those who will address you. It is difficult, however, for me to introduce to you your own mayor, who is present, and I know you will all be very glad to hear from him."

The Honorable Rudolph Blankenburg, extended a welcome on behalf of the City of Philadelphia in the following terms:

"It is my privilege and it will be your pleasure to learn that I shall be very brief. I did not come here this evening to deliver an address, but to extend to you, the members of the American Academy of Political and Social Science, to the guests and those present, a hearty welcome on behalf of the City of Philadelphia. This is an unusual occasion. I believe twenty-five or twenty-seven states are represented here to-night, even our brethren from Canada have sent delegates, and I know we reciprocate their good wishes, as they reciprocate our good intentions. It is more than a pleasure for me, as Mayor of the City of Philadelphia, to extend to you a most hearty welcome and to express the wish and the hope that the sessions of this day and to-morrow will tend to bring about all the results for which the American Academy stands. A hearty welcome to all of you, ladies and gentlemen!"

At the session of Saturday morning, March 30th, the presiding officer, Miles M. Dawson, Esq., opened the discussion with the following words:

"The subject, ladies and gentlemen, which we have before us this morning is the policy of Great Britain, Canada and Germany as compared with that of the United States, with reference to industrial combinations, and is, as you recognize, a continuance, under a slightly different form, of the discussion which we have already had and enjoyed. In all countries they have before them the same general problem as we of this country. A few conditions differ, but the desirability, and in fact the necessity, of providing for the protection of the public in relation to the purchase of stocks and bonds, concerning which the public should know something before purchasing, is as great in one country as another, as also is the necessity for providing for the solvency and reliability of corporations, not only to protect purchasers of stocks and bonds, but likewise to protect those who deal with the corporations. The necessity, moreover, for providing that the services may be performed at moderate cost, that extortion may not be practiced, is as important in one country as another. And lastly the more difficult question of getting good service is also in no wise different.

"On these accounts, although the methods of government vary and the peoples themselves differ, the problems are the same as with ourselves.

"While some of my neighbors live in a country which, so they say, never can do anything well, I have the good fortune to live in the best country in the world, with the best people, the best institutions, where we can do better than other people anything that they can do. That optimistic view of the United States is one we ought to adopt. We should learn from others; and, when we learn of things being done successfully in other countries, we ought to be ready and willing to take up these things and try to do them better.

"Our first speaker this morning is the Hon. W. L. Mackenzie King, whose eloquent closing address last evening was much appreciated by the audience.

Mr. King really requires no further introduction. I have the honor to introduce Mr. King."

The presiding officer of the closing session of Saturday evening, March 30, the Honorable John Hays Hammond, introducing the general subject of the evening said:

"When President Rowe honored me with the invitation to preside at this the sixteenth annual session of the Academy, he said that I was to use my own judgment, *ipsissima verba*, as to whether or not I should take part in the discussion this evening. I think I can convince you that I possess some discretion and possibly some other admirable qualities, in deciding not to take part in the discussion.

"Little Jimmie was possessed of unusual discretion for his tender age, and when asked by his teacher the question, 'Who discovered America?' Jimmie was embarrassed, and said, hesitatingly, 'Teacher, please ask me some other question.' 'Why so?' said the surprised teacher. 'Because,' said little Jimmie, 'it is just this way. A few days ago Pat McGinnis claimed that a man from Ireland had discovered America. Tony Giovanni said it was an Italian, and after the fight was over, none of us little fellows could tell who did discover America'.

"Now I do not intend to cast my hat into the ring on this occasion. I will leave the discussion of the subject to the heavy weights, and I use the term not irreverently, who are assembled this evening and who by their presence pay us honor.

"Perhaps no one has done more to disseminate the useful though belated information as to the legal aspects of competition and combination in commerce and industry than the first speaker. Certainly no one has invested the subject with such live interest as our distinguished guest, through his zealous efforts as Attorney-General of the United States in the enforcement of the federal anti-trust law. I have the pleasure to introduce to you Hon. George W. Wickersham, Attorney-General of the United States."

In bringing the Annual Meeting to a close, the President of the Academy said:

"At the termination of this extraordinary series of sessions, I want to take a moment of your time to express to all those who have participated in the sessions the sincere appreciation of the Academy for their valuable contributions. The standard set by this Annual Meeting is such that I must confess to a feeling of trepidation at the thought of preparing for the Annual Meeting of next year. To maintain the standard of this year will be no small task.

"With this expression of appreciation to the speakers, I wish to couple a word of thanks to the delegates, and to express the hope that we may have the pleasure of greeting them at the Annual Meeting of 1913. The Annual Meeting of 1912 now stands adjourned."

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The Initiative, Referendum and Recall



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COLLECTED AND EDITED BY
CLYDE L. KING, PH.D.
ASSISTANT EDITOR.

PART ONE

*Merits and Limitations of the Initiative,
Referendum and Recall*

FUNCTIONS OF THE INITIATIVE, REFERENDUM AND RECALL

BY JONATHAN BOURNE, JR.,
United States Senator from Oregon.

Briefly summarized, the functions of the initiative and referendum are:

- To restore the sovereignty of the people.
- To educate and develop the people.
- To secure legislation for the general welfare.
- To prevent legislation against the general welfare.
- To eliminate the legislative blackmailer.
- To make our legislative bodies truly representative.

I will discuss each of these in the order mentioned.

The chief function of the initiative and referendum is to restore the absolute sovereignty of the people—to make this in fact as well as in name, a government of, for and by the people. The word “sovereignty” conveys the idea of supreme rulership and we have taken pride in flattering ourselves that the American people enjoy the power of self-government. And so they do, in theory, but I shall undertake to demonstrate that they do not in practice, except in the few rare instances when, after suffering a long series of abuses, they arise, assert their rights and temporarily overthrow their political dictators.

The citizens of every state have seen legislature after legislature enact laws for the special advantage of a few and refuse to enact laws for the welfare of the many. Under the convention system of nominations, which has been universal until the last few years, slates of delegates were selected by men who commercialized politics, and the great masses of the people, unacquainted with political manipulation or too honest to resort to it, had no recourse but to ratify the slate. These specially selected delegates nominated candidates for legislative, judicial and executive offices in accordance with the desire of the boss. The same methods having been pursued in each political party, the voter was given a choice between two sets of candidates each under obligations to, and, therefore, responsible to, the manager of the party machine. Under this system,

cities, counties and states have long been ruled and the people deluded themselves with the pleasing assumption that this was "self-government."

Nay, more. This rulership by self-constituted dictators extended to national affairs, and through the misuse of federal patronage, aided by excessive representation in some of the states, control of national conventions has been secured and the will of the people has been ignored. Such rulership will exist in any state not having a direct primary guarded by an efficient corrupt practices act, and it will continue to exist in national affairs until, through the general adoption of a presidential primary, the people obtain the power to select the party candidates free from the dictation of managers of federal machines. Our boasted "sovereignty of the people" has been a myth, a delusion and a snare—an empty phrase serving chiefly to delay the ultimate assertion of the rights of citizenship.

Realization that legislatures were habitually misrepresentative and that public servants were selected by private interests has finally inspired the people of this country with new hopes, has aroused them to higher ideals and brought them a "new birth of freedom," so that to-day the fight for the new independence is waged in every state and in the nation at large.

Initiative and Referendum Foundation of Popular Government

It is the battle for popular government, at the foundation of which lies the initiative and referendum—the power of the people to make laws. Once this power is secured the other popular government features will be added, until conventions, the ready instrumentality of the political dictator, will be abolished and the direct primary, corrupt practices act and recall will be established. Then may we speak truly of the "sovereignty of the people," for then will exist their power to make or unmake laws, to select candidates and elect public servants, to dismiss from service any elected officer who proves unfaithful, incompetent or otherwise unsatisfactory. Nothing short of this can fulfil the idea of supreme rulership which the word "sovereign" conveys.

But let us not be deceived as to the extent and manner of the exercise of this power. It is not proposed that the people shall act directly in all the intricate details of legislation or that legislatures shall be abolished or made needless. Such has not been the experi-

ence in my own state, Oregon, where the initiative and referendum have been most employed. At the last general election the people of Oregon voted upon thirty-two measures, the largest number ever submitted at one election. Of these measures, eleven were constitutional amendments, of which four were adopted and seven rejected. Of the twenty-one bills submitted, only five were enacted and sixteen rejected. The result of the direct vote was nine measures adopted. The Oregon Legislature held a forty-day session last January, considered seven hundred and twenty-five bills and two hundred and thirty-five resolutions and memorials. Two hundred and seventy-five of the bills were enacted. Therefore, the extent of substitution of direct legislation is indicated by the ratio of nine to two hundred and seventy-five. This is not exactly "abandonment" of the representative system. Yet Oregon enjoys popular government and the people are sovereign, for they had the power under the referendum to defeat almost any one of those two hundred and seventy-five legislative acts. They have the power to enact any measure the legislature failed to pass.

It is a very general opinion that the American people are afflicted with too much legislation, but, if this be true, the fault lies not with the initiative, as I have just shown. Neither can the initiative be charged with whatever evils may have arisen from hasty or ill-considered laws. The fact is that laws enacted by the people are more carefully prepared, more widely discussed, and more thoroughly considered than are the acts of a legislature. A bill or proposed constitutional amendment submitted under the initiative must be filed with the secretary of state not less than four months before the election. Prior to that time the measure secures publicity through the fact that it must be circulated for the signatures of eight per cent of the voters. After the bills have been filed the promoters and opponents thereof may file arguments for or against. It is made the duty of the secretary of state to have a full copy of the title and text of each measure, together with the arguments for and against, printed in a pamphlet, a copy of which must be mailed to every registered voter not less than fifty-five days prior to election. The title of a bill appears in the publicity pamphlet exactly as it will appear upon the ballot. In this way the voter secures the best possible information regarding the provisions of the bills, their merits or defects, and the reason why they should or should not be enacted.

No such opportunity for the study of measures is afforded members of a legislature. The Oregon Legislature, for instance, is in session only forty days and members secure printed copies of the bills introduced no sooner than the end of the first week. Very frequently important bills are introduced after the middle of the session and the members have copies of these before them not more than twenty days. Amendments are frequent, and sometimes these are made as late as the day on which the bill is passed, so that legislators frequently vote upon bills without knowing their real effect.

We had a conclusive demonstration of this in the Oregon Legislature of 1903, when the legislature repealed a statute which allowed every householder a tax exemption of household goods to the value of \$300. After the legislature adjourned members were astonished to learn that they had repealed such a law, and, at a special session, called within a year, this statute was re-enacted by an overwhelming vote. Four months of public discussion would have disclosed the nature of the bill and would have prevented action not intended.

No Hasty or Unwise Action

In the exercise of this sovereign power there are other circumstances that guard against unwise action. One argument often used against the initiative is that a measure submitted under it is not susceptible of amendment after it has been filed in the office of the secretary of state. Instead of being cause for criticism, this is reason for commendation, for experience has shown that one of the common methods by which vicious legislation is secured is to introduce a harmless or beneficial bill and let it secure a favorable report from a legislative committee, but with a slight amendment inserted therein which entirely changes its character or effect in some important particular, thereby serving some selfish interest. When it is known that a bill must be enacted or rejected exactly as drawn, the framers of the measure will spend weeks and months in studying the subject and drafting the bill in order to have it free from unsatisfactory features.

In actual practice in Oregon almost every proposed bill is submitted to a considerable number of men for criticism and suggestions before its final form is determined upon. The original draft undergoes many amendments, and these are more carefully considered than would be the case if the bill were before a legislature. Know-

ing that the bill will be subjected to the closest scrutiny of all the people for four months, the framers of the bill desiring its passage naturally endeavor to remove every reasonable objection, to make all its provisions perfectly clear, and especially to remove every indication of bad faith. A bill to which there are many serious objections would stand little chance of adoption by a popular vote. When thus drawn and submitted, a bill is in the best possible form, and there is no possibility of its being made the instrument for the enactment of what are commonly called "jokers."

Bills thus drawn may not be perfect, for no human work is perfect, but they will be much better drawn than the great majority of bills presented to a legislature; and, if adopted, will be an improvement upon legislation already in force on the same subjects. The people of a state will never vote against their own interests, hence they will never vote to adopt a law unless it proposes a change for the improvement of the general welfare. Previous to the last election, each voter had fifty-five days in which to consider thirty-two measures, which, with the arguments for and against, were laid before him in convenient printed form. This gave him an average of nearly two days for the consideration of each measure. Assuming that many of the bills introduced in one house never appear in the other, each member of the Oregon Legislature was called upon to consider about five hundred bills in forty days, or over twelve each day, besides being compelled to consider many resolutions, motions, and questions of a political character. In my opinion, the individual voters of the state, in the quiet of their own homes in the evening, could better consider and decide upon an average of one bill in two days than the members of the legislature, amid the hurry and strife and personal feeling incident to a legislative session, could consider and decide upon an average of twelve bills a day. It is erroneous to assume that the voter is required to pass upon a large number of measures in the few minutes he occupies the booth on election day. Such is not the case. He has several weeks in which to determine how he will vote, and merely takes a few minutes in which to mark his ballot.

To Educate and Develop the People

I have thus indicated the second function of the initiative and referendum—to educate and develop the people. Establishment

of direct legislation places upon the people responsibility for all legislation, for, having power to enact or defeat any law, they must be responsible for that which exists. When the people fully understand and realize this responsibility, they study their government more carefully and take deeper interest in the administration of its affairs. Where the initiative and referendum do not exist, the people have little encouragement to devote time and effort to the study of public questions, for, even if they desired, they have no power to change laws or conditions. Therefore, chief among the advantages of the initiative and referendum is the unlimited field afforded for individual and community development. Direct legislation establishes equal opportunity in government, for it places in the hands of every man the same machinery for accomplishment that every other man enjoys. It opens the way for men of good ideas and enables the whole community to secure the advantages arising from advanced thought.

Suppression of the individual is one of the results of delegated government; development of the individual necessarily follows adoption of popular government. Suppression of the individual is seen in every convention and every legislative body—city, state and national.

The great masses of the people are always more advanced in thought and ideals than a majority of men who secure positions of power in conventions or legislative halls. This has been demonstrated in numerous instances, which will readily suggest themselves to the minds of readers of this assertion. For instance, throughout the United States there is an overwhelming public opinion, carefully formed, in favor of popular election of United States senators. That opinion has existed in the minds of the people for a decade or more; yet party conventions have failed to endorse the principle and congress failed until recently to submit an amendment to the constitution in accordance with the popular will. The people of the country realize that no man can be elected United States senator by an uninstructed legislature unless he knows the individual members to whom he is primarily obligated for his election, and, what is still worse, in many instances, unless he knows the political boss, campaign contributor or special interest dominating a number of legislative members sufficient to prevent his election unless there is agreement, express or implied, to favor and protect with national

legislation the dominant interest. The people of the country have long desired to destroy this obligation to individuals and substitute therefor an obligation to the composite citizen; but a majority of members of the senate have only recently advanced to this idea of governmental accountability.

Always there are a few intellectual leaders who are in advance of the masses of the people; but the practical workings of delegated government are such that the masses of the people are always in advance of those individuals who secure political but not intellectual leadership. "Practical politics," under a system of delegated government, brings into power men who are guided more by selfish interest than by general welfare. Popular government reverses this condition and gives power to intellectual leaders rather than to men whose success is due to skill as "practical politicians."

Occasionally there arises a man who is not only an intellectual leader but also a practical politician of such ability as to secure adoption of his ideas, even under a system of delegated government; but these instances are rare. Though working with the old tools of government, an intellectual leader in Wisconsin was able to secure practical adoption of many of his ideas. Greater and earlier success would have attended his efforts if direct legislation had afforded him a means of appealing direct to the people of his state.

The Instrument of Intellectual Leadership

The power of direct legislation under the initiative and referendum is the practical machinery of intellectual leadership. Without that machinery the intellectual leader is in most cases powerless. How often have we seen this illustrated in conventions and legislatures. Occasionally a man with advanced ideas secures a seat in a party convention, though usually men of that kind are not wanted by the leaders who make slates of delegates; but when the man of originality and progress gets into a convention he finds himself powerless. If he wishes his party to incorporate in its platform a plank embodying an advanced principle in government he formulates a resolution for that purpose; and, under the rules, that resolution goes to a committee without having been read to the convention. The committee have been carefully selected in advance after consultation among men who, because of their skill in "practical politics," are able to manipulate conventions. Members of the com-

mittee know the men to whom they owe their selection and the interests back of the organization. Their action upon the resolution submitted by the progressive delegates is, therefore, in accordance with the wishes of the interest they represent; and when the party platform is read it contains no endorsement of the new idea unless popular demand has forced its adoption. A convention is less progressive than the people; a committee on resolutions is less progressive than a convention; hence the strangulation of new ideas in a convention.

Legislatures that, in theory, represent the people, generally prove to be less advanced in thought than the people themselves. Though legislators are elected by the people, they are in most states nominated by conventions controlled by "practical politicians" backed by campaign contributors. Hence members of a legislature feel an obligation to certain known individuals and their first act is to co-operate with those individuals in the organization of the legislature. This organization includes the appointment of standing committees, which appointments are usually made after consultation with the same "practical politicians" who controlled the nominating conventions, with the result that important committees are so constituted as to make protection of special interests certain. Then, when the legislator with advanced ideas introduces a bill for promotion of the general welfare as against special interest, the bill goes to a committee representing special interest and there remains until the close of the session; or, if reported at all, comes to light too late for action or with amendments that change its character. This procedure has been witnessed in every legislature in every state. Applying to a legislature the statement in the last preceding paragraph, a legislature is less progressive than the people; a "graveyard committee" is less progressive than a legislature; hence the strangulation of new ideas in a legislative body.

On the other hand, direct legislation encourages individual development. Under the initiative any man can secure the submission of his ideas to a vote of all the people, provided eight per cent of the people sign a petition asking that the measure he proposes be so submitted. There is no opportunity for secret strangulation and all the people have the advantage of studying the ideas of the most advanced, and have opportunity to adopt those ideas if they deem such action wise.

Promotes the General Welfare

This unlimited opportunity for individual accomplishment opens the way for legislation for the general welfare, and, as I view it, only legislation for the general welfare can secure popular endorsement. This opinion is founded upon an analysis of the forces controlling human action. Either impulse or deduction, followed by conviction, controls all human action. If the individual be confronted with the necessity for immediate action, then impulse arising from emotion, such as love, hatred, anger, sympathy, sentiment, or appetite, is the determining force. Without conviction there will be no action.

Individual action should be guided by reason, but is frequently emotional. Community action, as in an election, must be based upon conviction resulting from analysis and deduction. Self-interest is the force controlling every future or postponed action of the individual, not necessarily always selfish interest, for sometimes the individual is satisfied with his participation in the improved general welfare incident to the action. Generally, however, the individual's action, when unrestrained, is governed by his own selfish and personal interest.

No two people in the world are exactly alike; consequently each individual has a different point of view or idea as to what constitutes his own particular personal or selfish interest. Where individuals act collectively or as a community, as they must under the initiative, referendum and recall, an infinite number of different forces are set in motion, most of them selfish, each struggling for supremacy, but all different because of the differences in the personal equations of the different individuals constituting the community. Because of their difference, friction is created, each different selfish interest attacks the others because of its difference. No one selfish interest is powerful enough to overcome all the others; they must wear each other away until general welfare, according to the views of the majority acting, is substituted for the individual selfish interest.

If all the individual units of society were alike, then selfishness would dominate not only the individual but the community action as well. But so long as no two people are alike, just so long will selfishness dominate the individual if permitted to act independently, while general welfare must control all community action; for if the individual can not secure the gratification of his own selfish desire,

then he must rest satisfied with the improved general welfare in which he, as one of the units of the community, is a proportional participant.

This logic applies to a community or a class. Under the initiative, referendum, and recall there can be no class or community action against the general welfare of the citizens constituting the zone of action. The individual, through realization of the impossibility of securing special legislation for himself and against the general welfare of the community, soon ceases his efforts for special privilege and contents himself with efforts for improved general welfare. Thus the individual, class, and community develop along lines of general welfare rather than along lines of selfish interest.

In further refutation of the unwarranted fear of hasty or unwise community action, I assert that no individual will ever vote for, or willingly assent to, a change, unless satisfied that that change will directly benefit him individually, or that the action will bring improved general welfare to the community, in which event he is satisfied with proportional participation incident to that improvement. In other words, community action determines the average of individual interests, and secures the greatest good for the greatest number, which is the desideratum of organized society.

Prevents Special Legislation

As a preventive of legislation against general welfare, the referendum operates in two ways. First, it discourages the passage of such measures by a legislature through realization that the people can and probably will defeat the same under the referendum. Second, if such legislation be passed either intentionally or through ignorance of its effect, the people can and will invoke the referendum power and thus prevent its becoming effective.

Eliminates Legislative Blackmailer

One of the most contemptible enemies of society is the legislative blackmailer—a member of a legislative body who introduces a bill unjustly attacking some business interest with no honest intent but for the purpose of inducing the threatened interests to pay for the abandonment of the measure proposed. A public servant vested with legislative power who thus violates his trust not only injures a private interest but brings the powers of government into contempt.

Only physical courage is lacking to make such a man a highwayman or a pirate. His operations are the more dangerous because difficult to prove. The referendum affords a remedy, however, because any interest unjustly attacked in this manner can safely refuse to buy immunity or pay tribute, and, if the unjust bills be passed, can appeal to the people under the referendum, confident that the people will not give their approval to such legislation. Corporations in Oregon have not been held up with "pinch bills" since the initiative and referendum became effective in that state.

Developing Influence on Legislators

The initiative and referendum also develop legislators by causing them in their deliberations to keep always in mind the interests and viewpoint of the people whose servants they are. This they will do through a realization that, having power to enact or defeat laws, the people will watch legislative proceedings and hold every legislator accountable for his acts. Under the referendum corruption of members of the legislature is practically eliminated because of the knowledge on the part of the persons desiring special legislation that even though enacted by the legislature, defeat of such laws is within the power of the people.

The Recall Chiefly Admonitory

The recall, to my mind, is rather an admonitory or precautionary measure, the existence of which will prevent the necessity for its use. At rare intervals there may be occasion for exercise of the recall against municipal or county officers, but I believe the fact of its existence will prevent need for its use against the higher officials. It is, however, an essential feature of a complete system of popular government and I see no reason why a man who occupies a judicial position should be governed by laws or standards of public service different from those which apply to legislative or executive officers. Judges are but human. We sometimes elect legislators to the bench, send former judges to the legislature, and place judges in executive positions, even elevating them to the highest executive office in the land. Does a man change his standards of ethics when he changes his office? I think not. A man who is dishonest or incompetent in an executive or legislative office will as likely be dishonest or incompetent in a judicial office. A man who would use his power

as an executive in an improper manner or for improper purposes would exercise judicial power in the same way. In any branch of the government he is a servant of the people, not their master; and he should be subject to dismissal by the people after fair opportunity to be heard upon his record.

To assert that judges are above corruption or improper prejudice and that they are always efficient public servants is too absurd for serious consideration. The men who sit on the bench to-day were boys when members of the legislative and executive branches of government were boys. They were no better or worse on the average. In childhood and young manhood they mingled on an equality, enjoyed the same sports, received instructions in the same schools, were taught the same religious principles, were subjected to the same temptations, indulged in the same vices, and cherished the same ambitions. Upon what reasoning, then, can it be asserted that the boy who studied law and found such favor in the eyes of the political boss as to secure a nomination for the bench is superior in either efficiency or honesty to his brother who entered business and was slated by the same boss for a position in the executive or legislative branch of government?

There hangs no halo of sanctity around the head of the judiciary, except as unthinking men concede a sacredness which the legal profession has assumed for occupants of the bench. Judges, like all other men in public or private life, are generally honest. Their failure, in exceptional instances, to serve faithfully the people by whom they are employed, is due to the same cause to which may be attributed similar failure on the part of other public servants. This cause is largely the unrepresentative system by which they are chosen.

Adoption of the recall is nothing more than the application of good business principles to government affairs. Every wise employer reserves the right to discharge an employee whenever the service rendered is unsatisfactory. The right of the employer to discharge his employee rests upon exactly the same basis as the right of the employee to quit. The principle is recognized throughout the business world, and it is put in practice by every large and successful corporation.

Consider the absurdity of the recognition of the right of a public officer to quit his position at any time and the denial of the right

of his employers to discharge him. To assert the right in one instance and deny it in the other is to maintain a one-sided contract, the discrimination being against the whole people and in favor of the individual. If we can trust an individual to deal justly with the people when he considers tendering his resignation, we can also trust the people to deal justly with a public servant when they consider discharging him.

It is generally conceded that the American people have intelligence and honesty enough to be trusted with the power to select their public servants, even to choose a President of the United States. If it be granted that the people have intelligence enough to choose a President of the United States, no man can consistently contend that they have not the intelligence to act wisely upon the question of discharging a state, county, or municipal officer. I think no one proposes, at present, to extend the recall to any federal official except those elected by the people of the several states.

All that is desired by the people of any state, county, or city is good service for the general welfare. They will never make a change unless satisfied that it will be a change for the better, hence they will never discharge a public servant unless convinced that his successor will be a more faithful and more efficient public official. They have a right to improve their government, or try to do so, if they see an opportunity, and this is the function of the recall. The interests of one individual must not stand in the way of better government.

We have heard much about the "rule of the mob" in connection with the initiative and referendum and the recall. A mob is a body of men acting against law, order, and justice. Legislatures sometimes do this—the people never, if given an opportunity to act in a lawful way. I grant that where wrongs have been long imposed and remedies have been denied, the people finally resort to force to redress their grievances, just as they did in the American Revolution. Resort to force came only after every peaceful means had been tried in vain and when longer endurance was impossible.

To some this is mob action. I am disposed to give it a higher characterization; and though it is an overthrow of existing authority, I regard it as the establishment of law and order in the highest sense. When the people of a republic, exercising their inherent right to change their laws and constitutions, vote to adopt new and better systems

of government, I deny that this is mob action; it is the establishment of law and order. The overthrow of a misrepresentative system, maintained by political machines enjoying dictatorial powers, and the substitution of a truly representative system means the attainment of higher standards of human justice and equality, and, consequently, of a more peaceful and more nearly perfect government. The voice of the people should be the law of the land, and, since the initiative and referendum and the recall register the voice of the people, they are the best mediums for the establishment of the best governmental principles.

Adoption of the initiative, referendum and recall is in entire accord with the principles on which our government was founded. The most intellectual, most courageous and most patriotic of the American people in 1776 declared that governments derive their just powers from the consent of the governed, and that it is the right of the people to alter or abolish their form of government and to institute new government, laying its foundation on such principles and organizing its powers in such form as to them may seem most likely to effect their safety and happiness. Years of experience with legislatures chosen by special interests and executive administrations wielding patronage powers sufficient to force re-nomination, have convinced the American people that there is need for the initiative and referendum in the several states and for the other popular government laws, the direct primary, efficient corrupt practices act, recall, and, nationally, a presidential preference law which will destroy the power of an administration to perpetuate itself in office or dictate the selection of its successor. The possession of the powers comprehended by these laws is sovereignty and the restoration of popular sovereignty is the chief function of the initiative, referendum and recall.

THE INITIATIVE, REFERENDUM AND RECALL

BY GEORGE W. GUTHRIE,
Formerly Mayor of Pittsburgh Pa.

"Liberty without obedience is confusion, and obedience without liberty is slavery."—Penn's *Frame of Government for Pennsylvania*.

There can be no order and stability in any community, no civilization worthy of the name, unless the law gives expression to the ideals and collective will of the people, and its administration commands their respect.

Because the science of government is constantly being developed, because the rapid change of our population from rural to urban conditions has imposed new duties and responsibilities on our government, the meeting of which in an adequate manner is essential to the safety and well-being of the people, and because, in the face of this, it is, under our political system of party government, becoming more and more difficult to secure the changes in legislation and administration which the new conditions call for and the needs of the people demand, impartial and thoughtful men have come to a recognition of the fact that there must be some new method which will better enable the people to declare their will, and more surely and expeditiously enforce obedience to it, than is possible now.

Ultra-conservative men say that our present system of party government affords adequate facilities for all purposes; but that opinion ignores three essential factors, which must not be ignored in the consideration of the question.

In the first place, citizens, under our present system, divide themselves into parties according to their views on one or two issues which they regard as "paramount." These divisions, however, are necessarily on broad lines: men who differ radically on many questions act together to secure the adoption of the policies on which they agree. When conditions were simple, this system proved practically satisfactory; but as conditions become more complex, and the points of disagreement more important and those of agreement comparatively less important, these divisions become less satisfactory. More and more, citizens are beginning to feel that, unless some system

be provided by which the voters can give expression to their individual wishes on questions concerning which there is disagreement within the party, party associations cannot be maintained. The division of the people into two, or even three, great national parties, separated by clear and distinct lines, will soon be impossible, unless some method is provided through which intelligent men may continue their party associations without surrendering their own intelligence and conscience on questions on which they often have deep convictions. The division of the electorate into numerous small parties, rendering government through parties impossible except by bargains and trades, is not to be desired; yet, unless some method for the expression of individual differences under our present system is provided, it will be unavoidable.

In the second place, more and greater changes now take place, more and greater emergencies arise, in a year than formerly happened in a generation. Questions affecting the safety and well-being of the people arise from time to time, which should be met promptly. The delays which can be interposed when relief is sought through the ordinary course of party action, and the difficulties always met with in any attempt to fix responsibility for the passage or defeat of any measure affecting public interests, have and will cause great and unnecessary suffering and loss. Bills backed by public sentiment, but objectionable to controlling interests, are seldom openly defeated. They are smothered in the committee or left on the calendar of undisposed-of bills. At the last session of the Pennsylvania Legislature, the speaker refused to permit a roll-call on a certain public measure. When criticised for his action, he was reported in a public interview as saying that there was a clear majority of the house against the bill, and that the only effect of a roll-call would have been to put members on record and thereby cause some of them unnecessary trouble and expense in securing re-election. At the last Republican State Convention, a member objected to a resolution requiring all Republican candidates to commit themselves in writing to the measures pledged in the platform, because to do so would ensure the defeat of some of them.

Under such a system, how is it possible for the people to act intelligently?

They are not to be permitted to know the views of legislative candidates before election or how they vote when elected.

In the third place, in many instances an evil is accomplished by the mere enactment of a law, which cannot be rectified by its repeal. A franchise once granted becomes a contract and is not repealed by a repeal of the act granting it. A payment of public money under an appropriation legally made cannot be recovered. A general law, no matter how objectionable, becomes operative at once; it may be repealed at the next session, but even if the obstacles in the way of a repeal are overcome and the repeal secured at the next session, here in Pennsylvania the people must suffer under it for two years. A beneficial law defeated at one session may be enacted two years later; but in the interim the people must do without the relief. No matter how the evil measure was passed or the beneficial one defeated, whether it was ignorance, influence or direct corruption that accomplished it, the people are the sufferers, and under our present system must continue to suffer for two years at least.

It is because the people realize these facts that they are demanding a remedy and none has been suggested except the "Initiative, Referendum and Recall."

What Are They?

The "initiative" will provide a system by which the people can, without unreasonable delay, secure legislation which a majority after full public discussion believe to be best for public interest.

The "referendum" will provide a system by which the people can defeat legislation which a majority believe will prove detrimental to public interest.

And the "recall" will provide a system by which they can remove an executive or legislative officer elected by them, who has proven incompetent or unfaithful.

Proceedings under each of these systems must be inaugurated by a petition signed by a certain percentage of voters, varying from ten to fifteen per cent in the case of the "initiative," from fifteen to twenty per cent in case of the "referendum," and from twenty to twenty-five per cent in case of the "recall."

A petition under the "initiative" must contain a copy of the bill which the petitioners desire to have passed. When presented to the legislative body, the bill proposed must follow the regular course prescribed by law. It must be read, referred to a committee, printed, and reported back for consideration and action. If duly

passed and approved it becomes a law, as any other bill would. If it is rejected, or if it fails to receive final action in the legislative body, it must be submitted to the people at the next regular election for their consideration and action. While the legislative body cannot prevent the submission of the bill to the people, either by smothering, amending or defeating it, it can submit a substitute measure to be voted upon at the same election.

A petition under the "referendum" must be filed with the proper authority within a limited number of days after the passage of the bill objected to, during which period all bills of the class to which the "referendum" is applicable, must remain in suspense; the bill objected to must thereupon be submitted to the people at the next election.

If any bill submitted under either of these systems receives a majority of the votes cast at the election thereon it thereupon becomes a law; otherwise it fails.

A petition under the "recall" must name the officer affected and set forth the reasons for asking his recall. Upon the presentation of the petition, an election to fill the unexpired term must be held, either at the next regular election, or at a special election called for that purpose. The name of the officer proposed to be recalled is to be printed on the ballot as a candidate unless he withdraws it; other candidates may be nominated in the manner prescribed by law.

Bills proposed under the "initiative," or objected to under the "referendum," must be advertised substantially as in the case of amendments to the constitution; and an election under the "recall" must be held in the same manner and under the same regulations as an election for a regular term.

The best systems also provide that the proponents of or objectors to a bill submitted may file briefs, not exceeding a specified number of words, setting forth their reasons for or against it, which, together with the bill itself, shall be printed for distribution at public expense.

Why These Remedies are Necessary

The necessity of some such methods to preserve the integrity of our system of party government has already been explained; their necessity to prevent the breaking down of the barriers between the different departments of government, which is one of the fundamental principles of our system, needs only to be pointed out to be appreciated.

Through the operation of our system of party government, there has been developed in different municipalities and states, a body, commonly called "the boss and the machine," which, although unknown to the law, actually controls, more or less completely, the powers of both the executive and legislative departments. The framers of our constitution provided for separate and independent departments of government, each to exercise for itself the powers committed to it, and at the same time be a check upon all the others. The sole purpose of this was to prevent any one department becoming so powerful as to dominate and control the others, and so endanger the liberties of the people.

This is still the theory of our government. The "boss and machine," however, is a fact.

The "boss," chosen not by the whole people but by a mere faction, holding an office not known to the law, and exercising powers never legally conferred upon him, nevertheless, except in short periods of political revolution, controls both the executive and legislative departments of the municipality or state over which he rules, and in some instances, his malign influence has extended even into the judicial department.

Washington foresaw the possibility of such a condition arising under our system of party government; and in his "farewell address" warned the people that an excess of party spirit would have a tendency "to put in the place of the delegated will of the nation, the will of a party; often a small, but artful and enterprising minority;" and would be "likely, in the course of time and things, to become potent engines by which cunning, ambitious and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government."

Do we not now confront this very condition?

Justice Hughes, in describing the "city boss," says that "in the full play of his influence he becomes mayor, common council, commissioner of public works, head of the police department, as well as sheriff and district attorney." The accuracy of this description has never been challenged: *mutatis mutandi*, it also accurately describes the "state boss."

No one questions the existence and power of the "boss" in our system. Wherever he exists, his personality is so well known that no one familiar with public affairs ever hesitates in naming him. Yet he

holds no legal office, and exercises no lawful power. Were the purposes of the "boss" always honest and his methods pure, the system would still be a constant menace to liberty and good government.

That the powers of a single department of government should be controlled by an agency not known to the law and not selected by or accountable to the whole people, but only to a faction of a party, is incompatible with any theory of real representative government: but the control of the powers of two departments by a single agency of this character is destructive of our system of representative government, and overthrows the just balance of powers which is essential to its maintenance.

How much greater the evil—how much more serious the danger—when all three departments of government become subject to such control.

But the "boss" system, whatever pretenses it may make in the beginning, never has and never will remain honest either in methods or purposes. The opportunities which it presents for improper and illegal practices have in the end always and everywhere been utilized.

It is generally through the "boss and his machine" that the criminal and vicious classes secure the immunity required for the profitable prosecution of their occupations, paying therefor in money and in votes. So, too, it is to the "boss" that the "interests" go to secure the executive and legislative favors which they desire.

It is true that when the "boss" is hostile, or when his "machine" is not in perfect working order, direct bribery is sometimes resorted to. This, however, is dangerous to all concerned and is not a popular method.

The "boss" holds no office and can receive favors without subjecting either himself or the giver to the penalties of the criminal law.

Two other factors have been developed which tend to impair the balance of the system established by the constitution. One is the undue influence of the executive department, through the patronage which has from time to time been committed to it; the other is the number and vast wealth of business interests, which may be peculiarly and specially benefited or injured by new legislation, and which are therefore interested to defeat or promote it, without regard to the effect on the general public whether for good or evil.

It is true that sovereignty still remains with the people, and that

by long and persistent agitation they can in the end overcome all these obstacles and secure from the government that which they need and desire. But it is only by great and long-continued effort, and often by great expense which those concerned can ill afford, that it can be accomplished; and even then it may require the breaking of political associations to which the people are much attached and the defeat of other measures in which they are interested only in a comparatively less degree. In view of the rapid developments constantly occurring in matters which intimately affect our daily life, and of the rapid changes in conditions due to the growth of congested centers, more developments and greater changes taking place in a year now than in a generation before, these long delays in matters of vital importance impose a great burden of loss and suffering on the people and should not be continued if possibly avoidable.

Under our present system the practical difficulties in the way of any movement to secure legislation opposed by the "boss" are almost insurmountable. It generally requires either a political revolution or an insurrection so strong as to extort from his fears that which he will not concede to justice. Such legislation is usually smothered in committees, or left on the calendar of bills undisposed of, and it is difficult, if not impossible, to fix responsibility. And when the responsibility has been fixed, the power of the "boss" to protect the delinquent, either by securing his re election or providing for him in some other way, is very great.

The direct primaries are weakening this power; but when we contemplate the acknowledged expenditure this year of over \$110,000 to control (?) the primary election in Allegheny county alone, and the expenditure of over \$280,000 at the municipal election of 1911 in the same county, we realize how potent are the influences against which the people have to contend in any struggle with the machinery of a majority party.

What is the Remedy?

No remedy has even been suggested except the "initiative, referendum and recall," and as long as the opponents of these measures fail to suggest any other, we are justified in questioning either their good faith or their appreciation of the evils of which the people most justly complain.

But the opponents of these measures say that they will substi-

tute a "pure" democracy for representative government, and "popular impulse and mob rule" for the deliberate action of representative bodies.

What are the facts?

This government of ours is a democracy, because sovereignty is not delegated to any body or department, but belongs only to the people themselves. It is not a "pure" democracy, technically speaking; because, although in some matters, notably in making and amending their constitutions, the people exercise powers of direct legislation; still the ordinary functions and details of legislation are committed to legislatures, whose powers are limited, however, by the constitutions which provide for them. On the other hand, it is not a "pure" representative government, because, as already stated, sovereignty has not been delegated either to any single department, or to all the departments of government combined.

We have no such body as the British Parliament, which is representative and sovereign. The power of parliament can only be controlled by revolution. With us, only the people themselves have this sovereignty.

To assert that, in such a government as ours, any procedure which merely provides a sure and convenient method for the ascertainment and enforcement of the will of the people, who are sovereign, is revolutionary, is simply an absurd misuse of words.

Nor are the systems proposed new in anything except in the mode provided for their application. From the beginning of this government, constitutions have been adopted and amended by direct legislation, and in different states various matters of legislation, more or less numerous, have been left to the decision of the voters. There is, therefore, nothing even new in the principle involved in these measures.

In the Articles of Confederation, and in the first Constitution of Pennsylvania (1776), the "recall" was provided for. It was dropped subsequently, not because it was radical or revolutionary, but because it was believed that the short term of office would sufficiently protect the people from abuse of power. The new terms of one year for the state house of representatives and two years for the national, for example, seemed to the framers very short when contrasted with the parliamentary term of seven years with which they were familiar. The shortness of the term, in most cases the term

would expire before it could be put in operation, and the almost entire absence of any public means for spreading information, made the "recall" generally unnecessary and always impractical.

But all this has changed.

Terms of offices have been greatly lengthened. Means of public and private intercourse have been developed so that every morning we have spread before us the news of the world, and a man sitting in his office in one city can talk with another in any city east of the Rocky Mountains.

Why, then, should the people be required to suffer for two, four or perhaps six years for relief from a public servant whom they had trusted, but who proved incompetent, unfaithful, or corrupt, or from the consequences of the improper defeat or passage of some legislative measure?

Of course, in cases in which actual corruption can be proved, a corrupt official *may* be removed by impeachment. This is the theory; but such proceedings are so cumbersome, slow and expensive, and are so apt to be disposed of, not according to justice, but according to political interests and influence, that they are practically useless. Moreover, in the great betrayals of public interest, actual corruption, even if it exists, cannot be proved. But there is not even this pretense of protection for the people from the consequences of legislative wrong. The impeachment of a corrupt legislator does not impair the validity of a law passed by his corrupt vote.

It is no answer to say that the people themselves are to blame for electing officials who prove false or incompetent, and therefore should suffer the consequences whatever they may be. No business man or combination of business men act on any such theory in the conduct of their private affairs. They claim the right to remove at once any officer or agent who proves unsatisfactory for any reason. A conspicuous example of this is contained in the revised draft of the Aldrich bill providing for a national reserve association, recommended by the Monetary Commission. This bill provides that the governor of the association, although to be appointed by the President of the United States, may be removed at any time by a two-thirds vote of the directors.

In theory the "recall" is right. Can the people, entrusted with the power to appoint, be safely entrusted with power to remove? The question answers itself.

The people are sovereign; and their sovereignty is never safe except in their own hands.

Let public officers know that they are public servants, and that neither the "boss," the "machine" nor the "organization" can protect them when they prove false to their trust, and the "recall" will be rarely needed. In an election under a "recall," the officer complained of will stand alone and will be judged on his own merits.

Instability

It is asserted that the "recall" would lead to continual public agitation which would affect business. This objection is not tenable either in theory or in fact.

This is a republic; and whatever agitation is necessary to secure good government for the people, must be borne as essential to its maintenance. The American people, however, are as a whole patient and conservative, not mercurial. We have from time to time exhibitions of great popular excitement; but in the end the decision of the people is reached soberly and deliberately; and when made, no matter how great and bitter the previous agitation may have appeared, nor how serious the disappointment of the defeated may be, it is accepted peaceably.

Even the election of a President by what the majority at the time believed to be fraudulent means, though bitterly resented, was submitted to without any popular disturbance whatever. There was no legal remedy; and the overwhelming popular sentiment in favor of order made any other course impossible.

In 1907, in the midst of profound political peace, the business of this country was precipitated into one of the most severe and protracted panics we have ever known; and now in the midst of the most bitter political contest of a generation, business is daily improving and prospects growing brighter.

This specter of business disaster from necessary political activity should therefore be laid to rest.

Special interests dependent upon governmental favors may be made uneasy when the power of the faction to which they look is threatened. But the life of the country moves on peacefully as long as justice prevails; nothing will disturb it but intrenched wrong in public office.

In Great Britain they have a "true" representative govern-

ment. Parliament is sovereign. It has removed kings and changed the succession of the crown; and it can prolong its own term. In all questions, its will is supreme; its acts can only be set aside by revolution. Executive power, moreover, belongs to what is in fact really a parliamentary committee. Yet for generations, no parliament has served out the term for which it was elected; from time to time—frequently at very short intervals—it is voluntarily dissolved in order to refer some important question to the decision of the people. Indeed, it is the rule to ascertain the will of the constituencies by a dissolution when an important new measure is introduced. In the twenty-three years, from the Congress of Berlin to the South African war, including the period of the Egyptian war, parliament was dissolved eight times in order to ascertain by a "referendum" the will of the people on important foreign and domestic measures, including foreign wars, the Irish land act, Irish home rule, the corrupt practice act, the franchise act, the redistribution of seats, and public education. Within the last few years there were two dissolutions in quick succession in order to ascertain the will of the people on a new system of land taxation.

It must be remembered that the dissolution of parliament also involves a change of the executive. It is as though the President and congress were both subjected to a "recall" at one election.

In fact, whatever the theory may be, the English system of representative government was developed through and rests upon the popular referendum. It is true that there is no written constitutional provision which compels a government to dissolve parliament under certain conditions, but public sentiment is so strong that no administration would dare defy it and persist in a refusal to dissolve when, according to the custom and usage, a dissolution was proper.

Cannot the American people be safely trusted with power much more limited and restricted than that which, in the hands of the English people, has secured peace, good order and safety for England during such a period of stress as that briefly outlined above, and kept it the most stable government in Europe?

Mob Rule and Government by Popular Impulse

The assertion that the "Initiative, Referendum and Recall" would substitute "mob rule and popular impulse" for the calm and impartial deliberation of representative bodies entirely ignores the

facts. To secure the signatures of from ten to fifteen per cent of the voters of any municipality or state to a petition for an "initiative," or from fifteen to twenty per cent for a "referendum," will always require so much time, effort and expense, that it would be impossible on a mere popular impulse or sudden outbreak of temper. It could only be accomplished when backed by a deep conviction of justice.

All this will be followed by the public arguments, for or against the pending measure, which will inevitably occur during the campaign preceding the election; there would also be distributed to the people, under public supervision, the printed briefs prepared by its supporters and opponents. Only a mind distorted by idle fears or perverted by self-interest can see in this the slightest element of "mob rule," or even the shadow of danger of the adoption of improvident and ill-considered legislation by "popular impulse." Of course, there will always be a possibility of a mistake; but it will be an honest mistake, and it will not occur more frequently than such mistakes occur in representative bodies. On the other hand, action prejudicial to public interest is sometimes taken in representative bodies, not through mistake, but through improper or even corrupt influence. That danger will be reduced to a minimum under the new system.

A Preventive of Corrupt Influence

The "initiative" and "referendum" would be fully justified by its tendency to eliminate bribery from legislative bodies, even if there were no other reason for its adoption. What inducement would there be to pay to defeat a bill in the legislature which the people could finally and promptly pass by the "initiative?" What inducement to secure the passage of a bill which they could vacate by a "referendum" before the slightest advantage could be secured from it? In the language of the street, no lobbyist will pay his money when the goods cannot be delivered.

Recall of Judges and Judicial Decisions

Much prejudice has been excited against the "recall," because some partisans have advocated its use for purposes for which it was not designed, and for which it has not been shown that it is needed.

It would be an idle untruth to assert that our courts have at all times and in all things acted in such a manner as to deserve and gain

the confidence of the people. From time to time, and unfortunately with increasing frequency, they have done things which merited and received public condemnation, and something must be done soon to restore public confidence.

Much, if not all, of the just criticism to which our courts have been subjected has sprung from causes which can and should be removed without resort to a remedy which may further impair their independence and so aggravate the evils of which we complain. The experience of the world has shown that, in order that the judiciary should command the confidence of the community, without which their full usefulness is impossible, they must be free from the influence, either of the suitors who appear before them, or of the sovereign by whom they are appointed.

Of course, as in all human institutions, there have been instances of judicial incompetency and even of individual corruption; but, generally speaking, the impairment of public confidence has been due either to the suspicion of the baleful influence of the "boss" or to the exercise of powers which do not properly belong to the judiciary. In almost every instance where improper influence has been charged, if we look far enough, the hand of the "boss" will be more or less clearly seen. Remove that corrupt and hated influence, and much will be done to restore public confidence.

The judges should also be relieved of all executive and administrative powers. Some very sincere people have from time to time advocated the conferring of non-judicial powers on the judges, with a mistaken idea that thereby such powers would be put beyond the control of the partisan "machine." In many instances the relief, if any, has been only temporary: the possession of such powers by the judges has made the control of them a necessity to the "machine," and in the end will lead to the destruction of their independence and a forfeiture of public confidence.

And finally, the courts must also cease to exercise "legislative powers," and especially to refrain from attempts to change the meaning of constitutions, to make them conform to their ideas of what they should be—a power never committed to them and with which they cannot be safely entrusted. For a court to exercise any legislative power, and above all to amend and alter the meaning of any constitutional provision, is to usurp a power never intended to be committed to it.

Legislative power belongs exclusively to the legislature. The correction of any improper use or non-use of this power belongs to the people, not to the courts.

The constitutions especially must be saved from any unauthorized interference. A constitution is the product of the direct legislation of the people: if it is too strict, it is for the people to relax it; if it is inadequate, it is for them to amend it.

No officer, executive, legislative, or judicial, has the right—no one should dare—to attempt to change the meaning of the constitution in any particular.

The constitutions were adopted by the people as a limitation on their servants; any servant who attempts to change a word of it puts himself above his master.

Many well-intentioned people say that unless some one has the power to "liberalize" the constitution from time to time, it will become too rigid to allow for growth. That may be true; but the "one" to exercise such powers is not the judiciary, but the people themselves.

The demand for "recall of judges and judicial decisions" will die a natural death with the removal of the causes which have produced it.

Conclusion

The "initiative," "referendum" and "recall" will be great agencies for making and keeping the government of the people truly representative. The people can safely be trusted with the power to use these agencies of liberty. In matters which concern their safety, well-being and happiness, the people as a whole are wiser than any man.

This is the lesson of reason and experience—that all the powers of government must be so regulated that the people can, with reasonable effort and promptness, compel their exercise in such manner as will, in their judgment, afford them the best opportunity to reach the highest development, physically, mentally and morally, of which they are capable.

This is the only way to orderly progress and peace.

The people have the right and the power, and in the end will exercise it, to so order their government as "to promote the general welfare and secure the blessings of liberty" to themselves and their posterity.

There must be proper provision for due consideration; but it must not take the form of obstruction, nor be of such a character as will unduly delay the people in realizing the benefit and advantage which the progress of the world is opening to them with greater and greater rapidity, or in securing that protection which only the state can adequately give against the ever-changing dangers to which they are from time to time exposed by changed conditions, or by new devices of cunning and unscrupulous men.

And so our civilization can move forward in peace and good order to higher and constantly higher standards and ideals, until we reach that point, to which the world is surely moving, of perfect liberty under perfect laws.

THE SO-CALLED PROGRESSIVE MOVEMENT: ITS REAL NATURE, CAUSES AND SIGNIFICANCE

BY CHARLES M. HOLLINGSWORTH,
Author of "From Freedom to Despotism," Washington, D. C.

What constitutes a political change, a progressive change or movement?

From the time of the framing and adoption of our federal constitution, American statesmen and publicists have constantly extolled the merits of the system which that constitution provides as marking perhaps the greatest step in political progress in the whole course of the world's history. It has even been the common American belief and boast that the constitution provided a system of government of and by all the people, adapted for use on the largest national scale, so nearly perfect, so effectively providing against every source of the weakness and instability that had led to, the downfall of constitutional governments in the past, that in its essential features it was not only fitted to endure indefinitely, but would answer the needs of all mankind for all time. That is to say, it has virtually been regarded as constituting the highest, most advanced stage that is possible in political progress.

It was in recognition of this phase of American opinion that James Bryce, in his "American Commonwealth," first published in 1888, said that "In the United States the discussion of political problems busies itself with details, and assumes that the main lines must remain as they are forever."

These high claims have been based primarily on the fact that the system established was more thoroughly democratic than any that had before existed, on a national scale as regards equality of rights and absence of political class-privilege, and was thus one of broadly popular consent and not of force; and secondarily and more especially on the fact that the constitution provided a highly perfected system of ascertaining and carrying out the will of all the people of all classes and sections by a comprehensive application of the principle of representation. And although the unqualified claims that have thus been made regarding the durability and

universal applicability of our constitutional system are no doubt ill-founded, the indisputable fact remains that the main features of that system mark the most essential differences between modern and ancient constitutional government. In this historical sense, therefore, its establishment, if only for a period, could properly be called a great step in the world's political progress.

Now, what is the nature and trend of the so-called "progressive" movement, regarded either from the point of view of a new and more perfecting advance on the constitutional systems of former ages, or of a more democratic and truly representative system than this country has so far had under its present constitution?

According to the formal professions of the promoters of the movement, it is one which provides for and secures a much more effective popular diffusion of political power than before existed. Its object is to "restore government to the people," or, as it is said, "to establish real popular government," the assumption being that anything which tends to more thoroughgoing popularity and increased directness in the workings of government is necessarily progressive.

But when the various measures or policies of this movement are impartially examined, it will be found:

(1) That the movement is not progressive, in the general historical sense, but the reverse;

(2) That it is not in the true and broad sense democratic in its basis and objects, nor constitutional in its spirit, but is distinctively a class movement, aiming at arbitrary control of other classes;

(3) That its program of reforms does not provide for the active exercise of any real governmental power or functions by the electorate as a body, or by a majority of the electorate as a body, but only provides different and more direct means of delegating such functions to individuals:

(4) That in actual operation these reforms delegate greater power to single individuals than are delegated to any class of elected officials under the hitherto prevalent representation system.

1. *In the Historical Sense, the Movement is not Progressive but Retrogressive*

The "progressive" reforms do not undertake to perfect the representative system, which marks the greatest advance of modern over ancient constitutional government. In part they repudiate

that system, and in part they pervert it to an exclusive class use and end, and render its action irregular and capricious even as thus used.

In so far as they repudiate or discredit the representative system, the propagandists of the new reforms are simply going back, as far as modern conditions and the size of modern states will permit, to that more direct mode of declaring their preferences or decisions, on the part of the mass of the voters, which characterized popular government in previous ages of the world. If this is progress, it is progress in quite a different sense of the word from that which it bears when applied to other phases of civilization. In the sciences, and in all the practical arts, there is no thought of going back to the conditions, methods or systems of ancient times, and calling that progress.

The fact is, however, that the word progress, when used to characterize any political movement of reform or revolution with respect to the lodgment of political power, is a largely misapplied and much abused term. As above stated, American statesmen and publicists have commonly regarded the establishment of our constitutional system of government as marking a new era in the world's political progress, in the sense of a permanent advance from arbitrary to free government, due to advancing political knowledge and experience. A vast deal of confusing misapprehension may be got rid of by discarding this idea entirely, for which in the long run there is no historical warrant, and regarding every change either to a more popular or a more restricted government, in any nation, not as signalizing the arrival of a new epoch either of progress or decline in the world's political history, but only as a consequence of the arrival of that particular nation at a new stage in its own life-history. This view finds two-fold confirmation, (1) in the fact that extremes of both restricted and popular government have co-existed in every epoch of the world's history; and (2) in the fact that nations in widely-separated epochs have repeated essentially the same round of reformatory and revolutionary changes.

As will immediately appear the "Progressive" movement is inaugurating what was the last modification of the ancient popular systems of government before their final downfall and disappearance.

2. *The "Progressive" Movement not Truly Democratic in its Basis and Objects*

Forms, policies and operations of government have a broadly and strictly democratic basis and character only so long as they are directed to the enactment and execution of laws that apply to all classes, and as near as may be to all sections of the country, alike, which are promotive of the common or reciprocal interests of all necessary component elements of society or the nation. It was in this broadly democratic spirit, and for the attainment of this end of the prosperity and well-being for all, that the founders of our system of government wrought in framing the constitution. As the preamble says:

"We the people of the United States (not meaning the "plain people," the "common people," or those without much or any accumulated wealth, but the whole of the country's citizen population) in order to provide for the common defense, promote the general welfare," etc., "do ordain and establish this Constitution for the United States of America."

But the "Progressive" movement is not in the interest of the whole people in the all-inclusive sense in which the term people was employed by the constitution's makers. It is avowedly in the interest of the "plain people," the "common people," the "masses," who have comparatively little wealth, or none, and against those who own or control large accumulations of wealth and their political representatives. It is a class movement as distinguished from a broadly democratic movement; and it aims to gain complete control of government in the interest of a numerous, not wealthy, class which it terms the "people," to the entire exclusion of any determining or controlling voice on the part of the smaller class who are identified with the large economic interests of the country.

It does not alter this fact to say that the movement is directed against an alleged perversion of the representative system to a class government of the opposite kind, controlled by, and for the benefit of, the large economic interests. Even on that contention, it is only a substitution for one kind of class government of another kind, in some respects less efficient and less stable, and really less democratic. I say less democratic, for, as will presently be shown, it seeks to accomplish its ends, in any state or in the nation, by

having the "people" vote plenary, largely arbitrary, powers into the hands of single individuals.

These willing individuals, the real originators and promoters of the movement, take care to declare that they are not bosses or dictators but only leaders of the "people." But that is precisely the literal meaning of the word demagogue, compounded of two Greek words meaning "the common people" and "to lead." And if there is deserved odium attached to this term it is due to the character and conduct of those who have assumed the office. It is significant that the most prominent aspirants to that office to-day should choose for themselves a title which became one of so much ill-repute in the declining days of the Greek democracies and the Roman Republic. In this phase of the movement there is nothing really progressive, but only a repetition of ancient political history. In fact, Aristotle describes with great accuracy, from ancient examples, except for the absence of the representative feature, both the basis and character of the truly democratic constitution which was originally established in this country, and the kind of government which the "Progressives" are now undertaking to substitute for it. In describing true democracy he points out that in all its modifications "the law is supreme." And he then describes another form of popular government, the workings of which are only partially regulated by law; and the essentials of the description, although drawn from systems of the Hellenic world of more than two thousand years ago, read as if they might have been written in this present year of 1912 A.D. of what is now being advocated and put into effect in this country; even including the subjection of the judiciary to popular control.

There is yet another species (of democracy) which is similar to the last except that the people (the "commons," or common people) rather than the law is here supreme. This is the case when it is popular decrees which are the supreme or final authorities, and not the law. It is the demagogues who are to blame for this state of things. For in states which enjoy a democratical polity regulated by law no demagogues ever make their appearance. . . . But it is where the laws are not supreme that demagogues appear. For the commons in such a state are converted into a monarch, . . . as being exempted from the control of the laws; they become despotic and consequently pay high honors to sycophants, and in fact a democracy of this description is analogous to tyranny among monarchical forms of government. . . . It is the demagogues who are responsible for the supremacy of the popular decrees rather than the laws, as they always refer everything to the commons. And they do

so because the consequence is an increase of their own power, if the commons control all affairs, and they themselves control the commons as it is their guidance that the commons always follow.

Another circumstance which leads to the last form of democracy is that all who have any complaint against the officers of state argue that the judicial power ought to be vested in the commons; and as the commons gladly entertain the indictment, the result is that the authority of all the officers of state is seriously impaired.

By way of conclusion, Aristotle has this to say regarding the false pretenses and real character of this kind of government:

It would seem a just criticism to assert that this kind of democracy is not a constitutional government at all, as constitutional government is impossible without the supremacy of laws. For it is right that the law should be supreme universally and the officers of state only in particular cases, if the government is to be regarded as constitutional. And as democracy is, as we have seen, a form of polity, it is evident that the constitution, in which all business is administered by popular decrees, is not even a democracy in the strict sense of the term, as it is impossible that any popular decree should be capable of universal application.¹

It will be noted that what Aristotle refers to as popular decrees he shows to be in reality decrees of the demagogues, "as it is their guidance [in voting] that the commons always follow."

3. *The Progressive Reforms only Provide More Direct Modes of Delegating Governing Authority and Functions to Individuals*

Where all the "progressive" measures—the direct primary, the initiative, the referendum and the recall—are put in operation, no new power, no new mode of exercising political power or functions, is thereby conferred upon the electorate. Under our republican system as it has hitherto been maintained, the one means which the electorate have of exercising political power is by voting; and with all of these reform measures adopted that would still remain their only means of doing so.

The initiative only provides that a law framed by some individual may, by a vote of a certain percentage of the electorate, in the form of a petition, be brought before the whole electorate, and its adoption or rejection decided by a general vote. A vote of yes or no on the proposition presented is the whole extent of the powers of the "people" in both steps of this process.

¹ Aristotle, *The Politics* Book VI, Chap. IV, Weldon's Translations.

The referendum is only a means of accepting or repudiating by popular vote the action of a representative legislative body in framing and enacting laws, and gives the electorate no part in the framing of laws, which is really the creative, constructive work of legislation.

The recall only provides for the voting, at one and the same time, of executive or judicial powers out of the hands of one individual and into the hands of another.

Thus the entire modifying effect of these reforms is to increase the frequency of voting and the number of things voted upon by the electorate; while leaving the framing of the laws and the exercising of both the executive and the judicial functions of government in the hands of individuals.

In fact, the act of voting is in its very nature a delegation of power. It is employed either in choosing a delegate to represent, or act for, the voter in an executive, legislative, judicial or other official capacity, or as a mode of accepting and ratifying, or rejecting, legislative work that has been done for the voter by either an elected body of delegates or by volunteer representatives.

In the matter of framing laws, constitutional or statute, what the initiative really does is to transfer that function from official lawmakers to non-official lawmakers. But every such non-official lawmaker, being self-appointed and extra-constitutional, occupies an irresponsible position very similar to that of the party machine boss who holds no public office. The initiative simply brings into the field a people's boss or champion to pit himself against the machine boss, in the control of legislation. Or, like the machine boss, he may while functioning as a public official exercise unofficially his powers as a people's boss.

The view here expressed finds corroboration in the statements of "Progressive" propagandists themselves, both regarding the nature and purpose of the advocated reforms, and, as will presently appear, regarding the manner in which they have thus far been realized.

Senator Bourne, of Oregon, made a speech in the United States Senate on May 5, 1910, on "Popular versus Delegated Government," in which he described at length the Oregon reformed system, ending with the declaration that it "insures absolute government by the people." The first sentence of that speech runs thus:

"The justice of all laws rests primarily on the integrity, ability,

and disinterestedness of the individuals enacting them, those construing them, and those administering them."

Is a system in which individuals enact laws, individuals construe them, and individuals administer them, an "absolute government by the people," as distinguished from delegated government? What power is it that individuals exercise in the performance of these several functions, under any elective system, if it is not delegated power, actual or implied?

"Fortunate, indeed," says Senator Bourne, "is that party which possesses in its electorate one or more individuals who are able to advance new ideas or evolve solutions which appeal to the sound judgment of his fellowmen." And again, "The initiative develops the electorate because it encourages study of principles and policies of government, and affords the originator of new ideas in government an opportunity to secure popular judgment upon his measures if eight per cent of the voters of his state deem the same worthy of submission to popular vote." That is to say, the initiative is in reality exercised not by the people, but by an individual, the non-official "originator of a new idea in government," and so on to the end of this famous speech.

4. *The Movement Really a First Step in the Extreme Concentration of Political Power*

Notwithstanding all the claims that are made for the "progressive" reforms in the name and on behalf of the "people," as one which restores them to power, it is in its actual working out really the first step of a revolution to the most narrowly restricted of all forms of government, namely, the arbitrary personal rule of a single individual. On this point decisive evidence may readily be cited from the promoters of the movement themselves.

While Senator Bourne has been almost the sole propagandist in the eastern sections of the country of Oregon's system of "progressive" reforms, it is Mr. W. S. U'Ren, of that state, who is known in that section as the father and chief apostle of the system.

In an interview published in the *New York Herald* of September 10, 1911, Mr. U'Ren told how, as the result of a ten-years' campaign of agitation and "educating up to it," "we got the question of amending the constitution to include the initiative and referendum submitted to the people, and the people of Oregon voted

for it." And "just as soon as we got the initiative and referendum through we organized the 'People's Power League' to back up measures we wanted the people to vote on."

"Do the people of Oregon always vote the way you want them to?" I asked.

"They always have thus far," replied U'Ren modestly.

"I began to understand, then," says the interviewer, "what the *Portland Oregonian* meant when it remarked editorially that 'Oregon has two legislatures, one at Salem and one under Mr. U'Ren's hat.'"

Now, this may be in its way government for the "people," as all government is to a certain extent; but it is certainly putting a severe strain on the meaning of terms to call it, pre-eminently, government of the people or by the people, or to apply to it the descriptive phrase, "restoring government to the people." So far as it is put into effect it is personal, one-man government.

The history of the "progressive" movement in California affords even a more striking illustration of this fact. Thus a popular account of it has been given, not entitled "What the People of California Have Done," but under the title—"Johnson: A Governor Who Has Made Good."

The opposers of the old party machines first got a primary law, and then sought for and found in Hiram W. Johnson an individual, not merely to lead, but to gain and exercise controlling power in the state. The governorship election was to take place in November, the nominating primary in August. Mr. Johnson started on an electioneering campaign in his automobile, in March, and kept it up continuously for the five months preceding the nominating primary. He went into every part of the state; and wherever he went he told the people and the politicians:

"I am going to be the next governor of California, and when I am governor I shall kick William F. Herrin and the Southern Pacific Railroad out of politics and out of the government of this state." And on that declaration, in the first person singular, it is said "he swept everything before him." Moreover, "he carried with him a legislature friendly in both branches."

Two of the sub-headings of the article are: "What Johnson Accomplished in One Legislative Session;" and "Johnson's Success in Handling the Legislature."

While this was perhaps all well and good, where do the people come in, except in the voting by which they delegated a concentrated and all but supreme power to one man? The pretense that in being prevailed upon to vote such power into his hands, they became themselves lawmakers, and took into their own hands the administration of the state government, is, on the face of it, the variest moonshine and humbug.

The history of the progressive movement in Wisconsin, as given by its own friends, affords no less positive evidence that the movement is one of increased concentration of political power in individual hands, rather than of a wider diffusion of power among the people or electorate. Thus Mr. La Follette, who makes very good claim to having been the pioneer progressive, makes his own personal biography cover essentially the whole of the movement in that state. He scarcely finds occasion to mention the people at all, except as, by superior electioneering methods, he secured their votes. But his narrative bristles with I's, as he tells how I fought one machine boss or another for fifteen or twenty years, and how I defeated or was beaten by the party organizations in various nominating conventions and elections.

One of Mr. La Follette's magazine biographers, referring to a speech he made in 1897, in his first advocacy of the direct primary method of making nominations, says, "It was the bugle call for the first battle . . . of the war for the resumption by the people of the powers of government." And then, telling of his second election to the governorship, the writer says, "This time he smote the enemy hip and thigh. The legislature was his, and the statute books were his to write in what he would." In this, have we really a resumption by the people of the powers of government, or an assumption by or delegation to one man of the office and powers of a dictator?

It is not here a question of whether or not the work Mr. La Follette did as governor was beneficial; but the question of whether it was accomplished through a diffusion or a concentration of governmental power and authority.

Neither does the fact that he was elected to the position affect the character of the government thus instituted as one of essentially personal rule, with the supreme power concentrated in the hands

of one man. Both the Napoleons were elected to their positions of supreme imperial power.

As is clearly evidenced by these instances, what the "progressive" reform movement really does is to provide ways and means by which a majority of the electorate may commission one man, who promises them betterment of their condition, with plenary, unrestricted powers to undertake to carry out the promise, generally by voting him into a leading executive position; and this with the implied understanding that he is personally to direct and control the legislative, and at need the judicial functions, as well as exercise the executive functions of government, in achieving the desired end.

That these reforms should work out in this manner is a natural and necessary consequence of the character and situation of that numerous part of the electorate in whose behalf they are advocated, electors who are not in position and have not the fit capacity and experience to act effectively through indirect representative methods, in opposition to the economically organized special interests. Not being competent judges of what can and what cannot be accomplished by political agencies and action, in the way of a desired equalizing of economic conditions or status, they vote the matter into the hands of some one who claims he knows how to do it, and puts himself forward as their professed champion and leader. Just as with the demagogues of old so with the demagogues of to-day—"it is their guidance that the commons always follow."

I have likened the people's champion to the machine boss, in certain respects. But there is an important difference, and one on which Mr. La Follette lays great stress. He has no machine; he does not work in secret and carry on secret political bargaining. No, because it would be impossible to work that way with the part of the electorate in which he gets mainly his support, the economically unorganized, largely dispersed, part of the population. It is necessary to make his appeal direct and personal to every man, as far as that is possible. He must make himself solid, not secretly with the few who have much wealth, but openly with the many of moderate, little or no wealth. And when things come to that pass, it is the getting the direct support of the many that puts the "man on horseback" in his position of absolute power. It is not the head of an oligarchy of alleged special privilege, but the people's

avowed deliverer from such an oligarchy, who, when opportunity is ripe, is most ready and apt to put aside all legal restraints and exercise arbitrary personal rule.

Julius Cæsar was an eminent politician-statesman who had no machine. From his earliest career, he was ever ready with his fiery oratory to champion the cause of the Roman democracy; and, although a senator himself, he was in frequent conflict with the senatorial oligarchy. This road, for him, led to personal imperial autocracy. If we desire a short cut to the same end, I know of no better way than to push forward and extend these pseudo-democratic reforms until they have been adopted throughout our entire system.

As I have said, the movement is a first step toward the establishment of personal absolutism. It is to be considered as a first step only because the commission given the individual is only for a limited period of time. The second and fully-consummating step will be taken when the commission is made perpetual.

5. *American Democracy's New Dilemma*

Naturally and necessarily some considerable period of time must intervene between the inauguration of the first step and the consummation of the last step in this revolution from true democracy to personal autocracy. And there is the clearest indication, as well as theoretical ground for prediction, that this interval will be marked by great instability and inefficiency of government. In this respect, as in others, there will simply be a repetition of what happened at a similar stage in their histories in the ancient declining democracies and republics. As we have seen, Aristotle noted as one important result of the substitution for government by law, of government by popular decrees procured by demagogues, "that the authority of all the officers of state is seriously impaired." And Mommsen, writing of the closing period of the Roman Republic, of a time when demagogism so flourished that it "became quite a trade," says: "If the Roman commonwealth has presented all the different functions and organizations more purely and normally than any other in ancient or modern times, it has also exhibited political disorganization—anarchy—with an unenviable clearness."

It is no hasty or superficial conclusion to say that the "progressive" reforms are inaugurating in this country to-day a similar period of political disorganization, at times and in some of its phases

to go to the point of anarchy. There are already the following clearly demonstrated reasons for this conclusion:

(1) Those reforms greatly increase the number of different questions to be submitted to general vote, and by so much increase the opportunities for widespread corruption among the "people," in whose name they are advocated.

(2) They at the same time increase the proportionate time during which the whole community is involved in political agitation and contention, and also the tendency for the contests to become personal and impassioned; with the politically-demoralizing effect that class, partisan or personal allegiance is more regarded than respect for the law.

(3) They subject the whole machinery of government, both as to the laws and the officials who administer them, to frequent and capricious changes which are inimical to efficient government.

(4) Above all they tend to bar really capable men from public office, thus further working against efficient and therefore orderly government.

In this last-mentioned fact we have presented, on a national scale and in a somewhat different form, the same dilemma which has long been encountered on a local scale in the government of cities, namely, that under undemocratic conditions, but with universal suffrage, the men that are most capable of grasping and dealing with the larger affairs of government are, by that fact, unfitted to secure office. By undemocratic conditions, I mean conditions where the majority of the electorate are incapable of independently grasping what have come to be the most important problems and policies of conservative government, and have their action determined by personal, including pecuniary, relations and influences. What those personal relations and influences are by which city bosses attain to and retain their positions is well known; as is also the fact that they are such as the highest type of citizen with statesmanlike abilities cannot enter into or practice.

But just as, at an earlier time, the great problems of municipal government passed beyond the grasp of a majority of city voters so now the great problems of national government have passed beyond the grasp of a majority of the entire national electorate. Hence, with universal suffrage, the votes of the majority instead of being the expression of intelligent and independent opinion, have

come to be merely an expression of preference for the candidate or party that makes the most attractive and plausible promises to effect direct and speedy betterment of the voters' condition; without knowing or considering whether or not those promises can be fulfilled.

This opens the door to political office to the shallow and unscrupulous demagogue, who is unstinting in his flatteries of and promises to the "people," and shuts the door on the capable statesman who only promises such things as can be achieved; and it does so at a time when the government is most in need of the highest statesmanship.

There is no difficulty in understanding how this deleterious, tending to become disastrous, relation between the "people" and the government has originated.

As the country has advanced in its development, economic and political, great and powerful economic organizations and systems have developed, whose operations extend through many states or over the whole country, financial corporations and labor organizations, whose powers are used for the advancement of special or class interests. This has not only made necessary at least a corresponding development and increase and extension of operations, of the national government, as a sovereign regulative and controlling power, but, as regards its other functions, through the up-building and administration of its great departments the government has itself become a greater and more complex corporation than any that has been formed privately for purely business purposes.

Who has done the work of organizing these great corporations, economic and political? And who is operating them to-day? Not the whole people nor the "plain people," but a select class of men of extraordinary natural ability and fitness, supplemented by suitable training, for such work. And when there is talk of "restoring the government to the people," if it means anything more than a false and hollow pretense, it means taking the operation of this vast corporation, the United States government, out of the hands of this select class of men of extraordinary ability of the needed kind, and putting it in the hands of the great mass of voters, a minority of them having at most only ordinary and inadequate ability, and the vast majority practically no ability at all, for such work.

Nobody of any intelligence and judgment would think of oust-

ing the officials and faculty of a great university and placing its affairs in the hands of a body made up without discrimination from men of only common school education and no practical experience as educators. Nor would anyone think of taking the affairs of a great bank or other financial institution out of the hands of the select and trained men of great financial ability who run it, and turning over its management to a number of farmers, or of "working men." The same statement may be made with respect to great manufacturing, transportation, mercantile or other corporations, operating on an inter-state or national scale. The inevitable consequence of such a "revolution" in the management of any such non-political organization would be its complete paralysis and speedy destruction.

The "progressive" movement does not have immediately so great a damaging effect on government only because it does not do what it professes to do, that is, it does not accomplish the physical impossibility of putting the affairs of the still greater governmental corporation directly into the hands of a majority of the general electorate. But the movement, so far as it succeeds, does the next thing to this: it puts the great affairs of government into the hands of men who are pre-eminent as demagogues rather than as statesmen. That generally means either men whose ability to grasp the greater affairs of government only rises a little above the average low standard found in the general electorate, or men who have little or no scruples about employing flattery of the people and misrepresentation of real issues in order to secure votes. In other words, it means putting the affairs of state in the hands of men who lack either the ability or the integrity of purpose to carry on good and orderly government.

Against this result, the advocates of capable, stable and conservative government have, under universal suffrage, no positive, permanent bar or remedy. No doubt failures on the part of mere demagogues to make good their promises will produce temporary reactions when needed constructive work can be accomplished by real statesmen. At such a time it will be the part of far-sighted wisdom and patriotic statesmanship not to rest on the fatuous notion that such a check to the movement marks the end of a mere popular craze; and to make every effort to mitigate the actual, remediable causes of popular discontent.

For one thing, the tariff should be as speedily as possible reduced to a strictly revenue basis. With the country's ports wide open to all the lowest-class laborers of Europe, the policy of using the tariff as an instrument for maintaining a high standard of living and character among wage-earners in this country is a mere politician's pretense; its real effect being to increase the cost of living and therefore tend to reduce or "run out" the more independent, intelligent, but not wealthy, components of the population.

Of still more importance is the need of laws providing for the imposition of direct taxes that will be just and equitable, under the extreme inequality in the distribution of wealth that now exists. Special taxes should be levied in some manner on large accumulations of wealth, individual or corporate, not merely on the ground of ability to pay them, but on the more defensible ground that taxes should be proportional to the amount of protection received from the community and the state.

There are, however, the following weighty reasons for believing that such reasonable reforms cannot permanently arrest this movement tending to the complete breakdown of constitutional government:

(1) As time goes on the disparity between the political capacity of the majority of the electorate and the problems of government to be dealt with will increase rather than decrease.

(2) Regarded solely from the point of view of their several degrees of radicalism, or antagonism to our existing system of constitutional government, there is no clear line of separation between "progressivism" and socialism; and none between socialism and some of the forms or aims of anarchism.

(3) Demagogues, in their strife for the votes of the "people," will constantly be impelled to shift and extend their grounds of attack on efficient and conservative government, so as to win supporters from all orders of malcontents, even including the most extreme, with correspondingly increasing peril to the existing system.

But the end, finally, as heretofore, may be expected to come through an act of the "people," an act, however, of political suicide. The injury to all classes inevitably resulting from civil disorder presses hardest on the "common" and poorer masses of the population. And as a relief from this distress the "people" will at last

become deaf to the blandishments of the misleading demagogue, and, turning to the man who has given proof of the possession of that combination of military ability and statesmanship that are necessary to the putting down of class strife and the re-establishment of orderly government, will, by vote, put him permanently in a position of supreme power.²

² Doubtless, to many readers, who have long and implicitly held that modern popular enlightenment may be relied upon to insure the perpetuity of modern popular political institutions, it will appear that the conclusions and predictions arrived at in this article are more positive and unqualified than the argument as presented warrants. For a more comprehensive and fundamental treatment of the whole question of the world's prospective political future, the writer must refer such readers to his lately-published book, "From Freedom to Despotism: a Rational Prediction and Forewarning," in which are succinctly given the main results of twenty years' close study of the economic, biological and political causes which determine forms of government and social and political revolutions.

ACTUAL STATE LEGISLATION

BY JOHN A. LAPP,

Legislative Reference Librarian, Indiana State Library.

In outlining the work of state legislatures it is useful first to set forth their status in our dual system of government and to determine as nearly as possible in a general way the limits of their powers.

There are two legal limitations on the power of a state legislature: the federal constitution and the constitution of the state. These prohibit the legislature from doing certain things both directly and by implication and the latter in most states outlines the manner of procedure in doing its work, departure from which is fatal to the validity of legislative enactments. In its beginning the federal constitution accomplished a division of powers between the state and federal governments. Those powers of legislation which it was deemed should be exercised uniformly throughout the country were placed in the hands of congress and the rest were reserved to the states. Concerning the classification of these powers, Mr. Justice Swayne said:¹ "In the complex system of polity which prevails in this country the powers of government may be divided into four classes: Those which belong exclusively to the states; those which belong to the national government; those which may be exercised concurrently and independently by both; and those which may be exercised by the states but only until congress shall see fit to act upon the subject." Eliminating the powers in this classification which belong exclusively to congress, which are comparatively few, we find remaining to the states all the subjects of legislation affecting the everyday relations of men, the maintenance of law and order, nearly the whole field of civil and criminal jurisprudence, the organization and control of all grades of municipal government, the management of highways and schools, the control of public utilities and the general regulation of business in its many phases. Add to these the powers which may be exercised concurrently with congress and to these, the powers which may be exercised by the states until the

¹ *Ex parte*, McNeil, 13 Wall. (U. S.) 236.

federal government pre-empt the field and we get an idea of the vastness of the scope of state legislation.

The second limitation, the constitution of the state, is of a two-fold nature; first the prohibition or limitation of certain kinds of legislation; second, the formulation of procedure to be followed in enacting laws. Nearly every state constitution has a bill of rights which protects in general terms certain fundamental rights. These serve as checks against any arbitrary action by the legislature as well as by executive or administrative officers. Many provisions of constitutions are merely legislative enactments, superior to the action of legislatures. Again, many state constitutions permit certain things to be done but only in ways fixed by the constitution. Lastly, the distrust of legislatures has hedged their work about with the most careful provisions designed to prevent haste and jobbery. The procedure in enacting laws in most states is outlined even to minor details, and the courts, more or less rigidly, hold legislation strictly to the test that it has been enacted in conformity with the constitutional provisions.

It will be observed from these restrictions that the task to make a state law conform to the requirements of a valid and effective enactment is a difficult one. The mere framing of a law to express exact intent is difficult enough, requiring as it does the most far-sighted view of its effect on existing laws and a precision of expression which admits of no question of its meaning; but when to these are added the further requirements that every law must conform to the specific and general provisions of two constitutions, as determined through long lines of decisions, the complexity of the problem is intensified.

The Legislatures and Legislators

The second matter to be considered is the make-up of the legislative bodies and the equipment of the members and their assistants for the task.

In every state the legislature consists of two houses, the senate and house of representatives or assembly or house of delegates, as the lower chamber is called in some states. These bodies are chosen in all states directly by the people but from different-sized constituencies and differ only in that the senate is usually elected from a larger district, for a longer term, and in many states not all of the members are elected at a time, thus making it a continuous body

with a part of its members holding over from the former session. The tenure of office in a majority of states is two years for representatives and four years for senators. States having annual sessions usually elect for one year and two years respectively. There is a small proportion of re-elections. In the last two legislatures of Indiana, three-fourths of the members of the house and of the newly-elected senators were new men. This proportion of new men will be found in most of the states to be approximately the same. The qualifications of the members vary widely. In general it may be said that few great statesmen adorn the ranks in any state while the great majority are men of average intelligence and experience. Many of the members have been successful business or professional men in local communities, but with no large experience. There are very few elected in any state who have state-wide visions and are free from narrow provincialisms. Taking them by vocations, we find about the following as shown in four selected states in which biographical data are obtainable. The Indiana senate of 1911, out of fifty members, had twenty-five lawyers, five merchants or other dealers, five farmers, two editors, five physicians, and three manufacturers. The house of representatives that same year, out of one hundred members had twenty-four lawyers, twenty-five farmers, thirteen merchants and other dealers, six physicians, three artisans, five manufacturers, three teachers and the rest miscellaneous. New York in 1912 had in the senate of fifty-one members, twenty-six lawyers, four manufacturers, three merchants or dealers, three farmers, three bankers, three real estate dealers, two contractors and one engaged in shipping. The assembly of 1912 in New York with one hundred and fifty members was composed of sixty-two lawyers, forty-one business men, thirteen farmers, nine professional men (other than lawyers) and twenty-five of miscellaneous occupations. The Michigan manual shows the legislature of that state to have been made up in 1911, of forty-five farmers, thirty-five lawyers, thirty-six engaged in various kinds of business and manufacturing, three professional men and thirteen of miscellaneous occupations. In Vermont in 1910 we find in the legislature one hundred and forty-six farmers, seventy-one business men, twenty professional men, thirteen lawyers and twenty-six of miscellaneous occupations. As a rule, in most states the lawyers predominate. Next come farmers, business and professional men in the order named. The average

legislature may be said to represent pretty nearly every class of citizens having a distinct interest in legislation. This does not happen in any conscious attempt to have class representation, but rather from the exigencies of politics.

Viewing the intricate problems of legislation on the one hand and the qualifications of the representatives selected to solve them on the other, we find the key to the failure of state legislatures. Few of the representatives are legislative experts. Scarcely any, not excepting the lawyers, are able to properly frame a bill either in its technical wording or its legal setting. Their preparation for their task is exceedingly meager. "Indeed, it is perfectly amazing," said Blackstone, speaking of the English parliament, "that there should be no other state of life, no other occupation, art or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest and most difficult of any. Apprenticeships are held necessary to almost every art, commercial or mechanical; a long course of reading and study must form the divine, the physician and the practical professor of the laws; but every man of superior fortune thinks himself born a legislator. . . . The mischiefs that have arisen to the public from inconsiderate alterations in our laws are too obvious to be called in question, and how far they have been owing to the defective education of our senators, is a point well worthy the public attention."

The lack of qualification for careful work, which is as true to-day as when Blackstone wrote, would be largely offset if the legislators were willing to supply their deficiencies by the employment of legislative experts. This, however, they have failed to do except in a few states and to a limited extent. Such experts would be the servants of the legislators to do their will in a legal way. They would perform none of the legitimate legislative functions. They would be merely to the legislature what the counsel or the engineer is to the corporation manager. They would perform the detail work, leaving the legislator free to do the larger work of formulating and determining general policies.

The Source of Legislation

All laws are enacted by bills prepared in proper form, presented to the legislature, passed according to prescribed rules laid down by the constitution and the legislative bodies and at last, in the enrolled

form, signed by the governor and thereby ushered into the statute book.

Bills are the outgrowth of ideas. "We need a law on this subject," is a common expression, and forthwith the legislator proceeds to introduce one, either on his own volition or at the instance of another.

Bills come to the legislature from many sources. First: The legislator himself is anxious to make a record. He has perhaps been elected as an advocate of certain measures and is compelled to attempt to "make good." Many people judge his career by the number and titles of bills bearing his name, and many legislators cast about for ideas to formulate into legislative bills. There is a scramble, too, to be the author of bills on important subjects, the party platform measures or some popular enactments, in the hope that their bill will be the one reported and passed into law. Each state has often perpetuated otherwise obscure names through association with certain popular laws. Second: Constituents of the members demand certain things for themselves or for the public good, and their bills must be presented for the sake of courtesy. These constitute a large part of the bills introduced. Some are prepared and handed to the legislator, others are merely suggested to him and he is expected to frame and introduce them and secure their passage. Third: Another source of bills is from organizations of a public nature, which seek the reform of the law in some field. Reform associations, charitable and philanthropic societies, bar associations, medical societies, and others frequently seek new laws or modifications of old ones, not to say anything of scores of temporary organizations formed to secure certain measures. Fourth: An important source of bills is from private interests, corporations and individuals seeking privileges or the ratification of privileges already obtained, or seeking legitimately to obtain advantages of organizations, power and opportunity. Frequently these are "gum shoe" measures which mysteriously advance from the committees and on the calendar without anyone knowing their real purpose or their real sponsors. Fifth: From the standpoint of efficient legislation there is no more hopeful sign than the increased activity of the administrative officers in formulating the laws needed for their departments. While this method has been in use for many years, its practical application has been more striking since the creation of the newer boards and com-

missions effecting the control of business. The Indiana Railroad Commission in 1911, for example, proposed and secured the passage of more than a score of laws on matters affecting the railroads where their experience had shown the laws to be weak. President Taft has followed this method during his term and each department has framed needed legislation and the bills have been known as administration bills. Commissioners of insurance, banking, factory inspection, public utilities, boards of charities, health and prisons, are giving more attention to law making, and out of their first hand experience are formulating effective measures. Sixth: The last source of bills to be here considered is that of special commissions or committees appointed under authority of the legislature to conduct investigations into specific subjects and report their conclusions with drafts of bills. These commissions usually work through the interim between sessions with the aid of expert assistants gathering data upon which to determine the need and the method of new legislation. They hear witnesses, observe conditions, weigh the situation and report their conclusions in definite form to the legislature. When well done, the work of these commissions establishes the basis of laws which should be fundamentally sound. The use of this method is increasing and the list of subjects each year gives a good insight into the trend of legislation. In some states the reports are ignored but not so in the majority of states and less so for each succeeding year. Even where the results are ignored in the home state the work of such commissions is certain to have an effect elsewhere.

Procedure

It would be an endless task to point out in detail the procedure in passing a bill through the legislature. The details vary widely in the states, but there are some essential parts upon which the whole process hinges which are found alike in nearly all of the states.

In all states the committee system prevails and every bill except emergency measures and those considered under suspension of the rules, is referred to a committee. Usually this committee is the one having the general subject of the bill in charge, but bills may be referred to other committees having no connection with the subject. Sometimes this is done at the request of the introducer who seeks a favorable committee and sometimes by the speaker who seeks to give it either a favorable or unfavorable committee according to his

prejudices or the demands of the party or controlling machine. In some states the power of reference is absolute in the speaker; in others one or more members must be heard in a demand for reference to a certain committee. In others the rules require that it be submitted to the committee dealing with the general subject.

Once in the hands of the committee the bill may, in most states, be arbitrarily held or reported according to the committee's wishes. A few states require all bills to be reported back to the main body either favorably or unfavorably. It always is in the power of the house to demand that a bill be reported to it, but in practice where they are not required to be reported they are held by the committee at pleasure. In fact the chairman may be an autocrat in refusing to call his committee together or submit the bill to them. It is a not infrequent case in many states to have bills held and defeated by the will of the chairman alone. He oftentimes is appointed to the chairmanship for that specific purpose. Or again in the slipshod methods prevailing in most legislative bodies, the chairman may purposely lose the copy of the bill which is the only official copy and thus delay it until a new one is introduced, when the process may be repeated. Such occurrences are common, especially in those states which do not print their bills on introduction—an indefensible condition which still prevails in a few states.

The procedure of a committee in considering a bill is properly a judicial function. The committee sits in judgment on the bill in the light of the arguments presented. After hearing the evidence and weighing its significance the committee is supposed to decide on its merits. As a matter of practice, however, hearings on the more important bills assume the nature of a partisan trial, with the majority members of the committee playing the rôle of prosecutor, judge and jury.

On questions of no immediate concern politically, to the majority, the committee is not always able to act judicially because the proceeding is so often almost *ex parte*, with one side having a preponderance of legal talent to sway the committee. The writer recalls an instance where the representatives of a special interest appeared before a committee composed almost entirely of farmers, and against the lone voice of a farmer representative who was advocating a certain bill, declared, one after another, that it was unconstitutional and proved it to the committee, although the iden-

tical law had once been on the statute books of the state and had been upheld in every particular by the supreme court of the state and of the United States. The people are not heard by a public defender except as some individual may interest himself for the public, and the judicial argument goes to the other side by default.

Another weakness from the public point of view is the lack of regulated procedure by the committees. Notice is not given to all interested parties; hearings are of the "snap" variety, no one but professional lobbyists knowing the time and place in advance; the proceedings are not generally reported and the public knows only meagerly who appeared and what they said; the votes of the members are not recorded and there is no public knowledge of how they vote except as they file dissenting opinions or openly express their views.

To offset these latter evils seems simple. Wisconsin has done it as described by a recent writer.²

"In order that all parties interested in legislation may be heard, the hearings of the committee are by rule scheduled in advance and a weekly cumulative bulletin is issued showing the exact status of each bill and its history up to the time of publication. This system of notification is not yet perfect, but at least the business man or citizen interested in certain legislation receives some warnings of hearings upon it. There is no secrecy in connection with these committees. They are compelled to report out each bill with a recommendation together with a record of the ayes and noes of each committee hearing. Committees are all powerful in an American legislature. The roll call on a bill before the house does not always tell the story of its oppositions or amendment in committee."

This rule, the first of its kind, will inevitably make committee procedure more orderly and the committee members more responsible. It insures greater care in examination of bills inside and outside the committee. Most states long ago placed the responsibility squarely on the shoulders of the legislator when he votes on the final passage of a bill. This rule puts it squarely on him when the more important process of committee work is on.

The Power of the Presiding Officer

The lieutenant governor is by the constitutions of nearly all of the states the presiding officer in the senate. In some states he

² McCarthy, *The Wisconsin Idea*, p. 199.

appoints the committees, but since he is sometimes of a different party from the majority of the senate, he is often robbed of this power.

The speaker of the house is elected by the members, which results under the party system in a mere ratification of the caucus choice of the party in power. He appoints all committees and designates the chairmen. The power of the speaker and, in some cases, of the president of the senate, aside from his personal influence which is usually great, consists in his right to appoint the committees, and refer bills and in his potential power in parliamentary procedure. The president of the senate not being a member of the body, and in many cases not even a party leader, is far less powerful than the speaker.

The first great struggle in a legislature is over the selection of committees. All forces seeking to pass or prevent legislation, center their efforts on getting committees favorable to their wishes. Sinister interests seek secretly to fix certain committees so as to be prepared for emergencies. Individual members are out after preferment for personal reasons, and sometimes the price paid by the successful candidates for speaker is his promise to appoint close rivals to important committee chairmanships. Men often become candidates for speaker in order to be in a vantage position to trade their influence for a committee chairmanship. In states like New York and others which have a committee on rules, or a "steering committee," the speaker's power is much larger because these committees which are close to the speaker have complete control during the rush of the closing days of the session and nothing can get through without their approval to bring it up. Since the larger part of legislation is done in the closing days these committees have greater influence than their short life would indicate. The speaker can, if he wishes, hand down only such measures as he desires, and there is no power short of parliamentary revolution to compel any bill to be handed down.

The speaker's authority on the reference of bills gives him another instrument of power, not so absolute, however, as his power over the disposition of bills when they are reported back by the committee. In the reference of bills he must be guided somewhat by the wishes of the members, although theoretically he could arbitrarily send a bill to a certain committee over protests. In

practice for the mass of legislation he refers a bill to the committee having to do with its subject matter.

But when a bill is reported back from the committee he may hand it down at once or hold it indefinitely. He may hand it down when his opponents are not looking for it and when his friends are alert. He may simply "pigeonhole" it and there is no power to compel him to produce it. Public opinion would of course rule him somewhat but public opinion as now organized does not play a part on more than the merest fraction of the bills.

The last power mentioned is in the speaker's parliamentary control. He may recognize whomsoever he pleases to make a motion or a speech. He may have an acute sense of hearing for all motions favorable to his purpose and be entirely deaf to others. He may declare motions carried or defeated and arbitrarily refuse to entertain protests. In the hands of a forceful man bent on certain ends, the speakership is a source of tremendous power.

It does not happen in many states, however, that this power is used to anywhere near its possibilities. The terms of service in state legislatures are so brief that no man becomes sufficiently powerful to be able to dominate a legislature. There are few men of dominating personalities, or great organizing power in the assemblies and the individual power which comes by long service, as in the United States house of representatives, is only rarely found in state legislatures. In some states, notably New York and Illinois, the speaker's powers are arbitrarily used and the speaker is comparatively more powerful under present rules than the speaker of the United States house of representatives. Not infrequently there are crude evidences of attempts at arbitrary power in different states, but as a general rule the speaker is either a tool in the hands of the party boss or organization or he is not strong enough or willing to make the power felt which he potentially possesses.

Attempted Safeguards Against Hasty and Corrupt Legislation

The first constitutions left the legislatures untrammelled in their methods of conducting business. But it was soon evident that the process unrestrained was susceptible to clever frauds and damaging errors. As a result the pendulum swung to the far extreme in the attempt to throw safeguards around the process of law making, thereby hobbling the legislatures at every turn. Some of these

"hobbles" have proven effective but most are mere admonitions to an unheeding body; some work to the advantage of good law making and others have at times brought a contrary result.

Limitations of Sessions.—All but six states³ limit the sessions to a biennial or a quadrennial period.⁴ All but sixteen states place a limit on the length of sessions. This limit varies from forty days in Wyoming to ninety days in Maryland and Minnesota. In many states this period has remained fixed for years. This very fact announces the absurdity of the present limitations. If sixty days were not too many for a state in 1850 what can we say of the number needed in 1912? The business of legislatures has grown enormously in the last few decades. A glance at the session laws reveals everywhere the enormous increase of the number of laws passed, while the increase in the number of bills considered is even a more striking illustration of the growth of legislation. The limitation of the session to a biennial period with power in the governor to call a special session is, the writer believes, desirable. There is good evidence to show that special sessions are most prolific of good legislation especially in those states where the governor may designate the matters to be considered. With the special session to meet emergencies there seems to be no good reason for a regular session more than once in two years.

Local and Special Acts.—Restrictions have been placed on all but a small number of states against special and local acts and acts of a private nature. Such acts had become a source of corruption, and embarrassed the legislature with a mass of detail work for which they were not fitted. They were a source of logrolling and jobbery, because each member had a direct personal interest in them for his locality or for his constituents. Not all such acts are prohibited, and in many states such bills are required merely to take a different course. Thus nine states⁵ require a notice of intent to introduce such a bill to be posted in the locality affected a certain time prior to introduction. An unforeseen result of the prohibition of local and special acts is the passage of such acts under general titles which effectually conceal their real intent. Fortunately the courts do not look with favor upon this kind of legislation unless the classifications

³ New York, Massachusetts, Rhode Island, New Jersey, South Carolina, Georgia.

⁴ Mississippi and Alabama have a session once in four years.

⁵ Arkansas, Georgia, Louisiana, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas and Florida.

upon which they are based are reasonable and based upon substantial differences. It has, nevertheless, promoted much vicious legislation and introduced great uncertainty and ambiguity into the statutes.

Reading of Bills.—Most states require the reading of bills at length three times or on three separate days. This is supposed to insure consideration, and it does have the effect of holding a bill for at least three days. In spite of the rule, however, bills are scarcely ever read at length, and the reading that is had is scarcely ever attended to by the members. A show of reading is made and it is entered on the journal that the bill was read a first, second or third time. The journals are accepted by the courts as the proof in such cases. Some states wisely provide that all bills must be presented in their final form and be in the hands of the members before they vote. Others require that the bills be printed in their enrolled form before they are signed by the governor. This is a wise safeguard to prevent the errors which are sometimes corruptly, sometimes inadvertently, placed in the final form. Every state has its examples of laws rendered useless or vicious by the change of single words in the enrolled bills. Many of these are a result of the system of enrolling bills. When states abolish the indefensible practice of having bills written out at length in handwriting and adopt the modern use of the typewriter and the printing press many of the worst evils of legislation will vanish.

Titles of Bills.—Among the more important requirements in state constitutions is the requirement that a bill shall have but one subject and that shall be expressed in the title. No question is raised so often in court as this one: Does the law have more than one subject and is that expressed in the title? Whenever no other ground of attack appears this one is always trumped up. The purpose of the provision was twofold: "The passage of an act under a false and delusive title which did not indicate the subject matter contained in the act; a trick by which the members of the legislature had been deceived into the support of measures in ignorance of their true character. Secondly, the combining together in one act of two or more subjects having no relation to each other, a method by which members in order to secure such legislation as they wished were often constrained to support and pass other measures obnoxious to them and having no intrinsic merit." This salutary rule has successfully prevented in the states one of the worst evils which has beset congress,

namely, the attachment of riders to necessary measures. The rule has its dark side, however, in the scores of laws which have fallen for no other reason than a technical defect in title, affecting in no way the merits of the law. Through fear of not getting the subject into the title legislators have gone to the ridiculous extreme of practically making the title a table of contents of the bill and then, like the pagan who set up an altar to the unknown gods, they add, "And all matters properly connected therewith," or sometimes they add, "And for other purposes" thus exposing the plurality of the subject.

Limitations on Introduction of Bills.—Another limitation is attempted in several states requiring that no bills be introduced after a certain period or, as in Tennessee, that the session be divided into two parts with a recess between the first part for introduction and discussion of bills and the second part for their final consideration and passage. On its face this looks plausible and effective but in practice it does not furnish the expected advantages. Its efficiency is destroyed by the power of amending bills which must always exist close up to the time of passage. There is no practicable way of preventing the amending process from making a complete revision of the bill. Thus the safeguard is gone. It is not practicable to prevent the introduction of dummy bills to be afterwards used to build upon. When the limit for introduction is reached, members, thinking they may have use for some kind of a bill later, introduce any sort of a bill at hand. The process is described by Judge Cooley: "A member who thinks he may have occasion for the introduction of a new bill after the constitutional limit has expired, takes care to introduce sham bills in due season which he can use as stocks to graft upon and which he uses irrespective of their character or contents. The sham bill is perhaps a bill to incorporate the city of Siam. One of the member's constituents applies to him for legislative permission to build a dam across the White Cat river. The bill to incorporate the city of Siam has all after the enacting clause stricken out and it is made to provide as its sole object that John Doe can construct a dam across White Cat river. With this title and in this form it is passed; but the house then considerably amends the title to conform with the purpose of the bill, and the law is passed and the constitution at the same time saved."

Governor's Veto.—The last check upon the legislature to be mentioned, and the one most effective if used, is the governor's veto. Originally designed as a protective power to the executive to prevent the usurpation of his functions by an unfriendly legislature, this power has been extended by usage and direct enactment to make the governor a part of the legislative machinery. The governor of every state except North Carolina has the veto power. In no case is this power absolute, however, for the measure may be passed over the veto by a vote ranging from a bare majority of members present of each house in Connecticut to two-thirds of the elected members in each house, in fourteen states. In thirty-one states the governor may veto items in appropriation bills and in several he may veto bills in part. The use of the veto power varies from extreme timidity on the part of the governors to extreme boldness. In some states the power is scarcely exercised; in others the governor sifts carefully every bit of legislation presented to him and vetoes on grounds of constitutionality, policy, technicalities, defects and lastly to keep appropriations within the income of the state. Governor McGovern of Wisconsin, at the session of 1911, called in the revisor of the statutes and other skilled lawyers and had every bill examined with reference to its form, its place in existing statutes and its effect on existing law, before he signed it. Defective bills were returned for correction. In Illinois for a number of years Governor Deneen has submitted every bill to the attorney-general to be examined as to its constitutionality. The governors of Pennsylvania, New York, Massachusetts, New Jersey and North Dakota have exercised the veto power freely. In New York the governor is compelled to weed out a large mass of undigested, defective bills thrown on his desk after adjournment, and the same is true in a measure of other states. While resulting in great good in preventing defective legislation the veto power has lessened the responsibility of the legislature. They put the measures up to the governor and shift the responsibility to him just as in many cases they have shifted the final determination to the people.

Conclusions

The foregoing discussion of the powers of legislatures, the personnel of the bodies, the limitations under which legislation is enacted and methods which have been devised as safeguards, would be inadequately done if it did not point a way out.

No one can investigate the state legislative machinery and its product without agreeing with the statement of Mill concerning law-making in England that "the utter unfitness of our legislative machinery for its purpose is making itself practically felt every year more and more," and again, when he said, "the incongruity of such a mode of legislating would strike all minds were it not that our laws are already as to form and construction such a chaos that the confusion and contradictions seem incapable of being made greater by any addition to the mass." Mill might have been writing in the twentieth century and of our own states so truly do his words fit the conditions now existing.

That there is a way out, the example of Great Britain proves. Mill's strictures would not now apply there. Parliament is performing well the proper function of legislation which is to control government and not administer it. The same might be said, in a measure, of Canada and the Canadian provinces.

Lawmaking must continue to be an increasingly difficult process requiring special genius in the preparation of the laws and wise discretion in enacting them. The limitations placed by the constitutions render this far more necessary in this country than elsewhere. To the difficulties of framing laws which are always great, are added the even greater difficulties of making them conform to constitutional limitations, methods and forms. The state legislatures are totally unfit as now organized to properly do this complicated work.

And yet they have the potential power to do it well if they assume only the proper functions of a representative body. To bring this about requires a recasting of the constitutional limitations and the methods of procedure.

1. The limitations on the length of sessions should be abolished or at least the time greatly extended.

2. The prohibitions against local and special acts except private acts should be abolished and in their stead a special procedure should be instituted by which notice should be given of such bills in advance; their purpose fully set out and the expense borne by the locality or special interest involved.

3. Requirements regarding titles should be less rigid and courts forbidden to declare laws unconstitutional because of defective titles unless it is evident that the title is misleading and calculated to conceal the purpose of the act.

4. Committee proceedings should be recorded. Every man should be placed on record. Committee meetings should be advertised in advance, and due notice sent to every person desiring it. Every bill should be printed and copies sent to any person desiring them on payment of a nominal fee. Every bill should be reported out of committee favorably or unfavorably a reasonable time before adjournment.

5. There should be a commission or a committee on revision having the best legal talent in their employ to which every bill should be referred before it is placed on the calendar in either house, in order that it may be properly framed. Every bill should again be referred to the commission when it is enrolled and ready for the signature of the speaker and president of the senate, and opportunity given for the correction of technical defects.

6. There should be a permanent commissioner to revise the laws. His whole work should be to bring the laws into a consistent code, to remove ambiguities and defects and when they are removed, to keep them consistent by having all bills affecting the revised parts, submitted to the commissioner, before being placed on the calendar. When started this should be merged with the committee on revision described above.

7. Legislative reference departments or research bureaus should be created and the widest possible investigations should be made on proposed legislation in advance of any action thereon.

DIRECT LEGISLATION AND THE RECALL¹

BY HENRY JONES FORD,
Professor of Politics, Princeton University.

This subject happens to be a burning issue of the times. So it may be well to say that, as students of political institutions, our attitude cannot be that of agitators or propagandists or even that of reformers. Our business is to consider political phenomena with the serene, impartial attitude of a naturalist contemplating the fauna and flora of a country. We must maintain the standpoint of scientific observation. Our object is to ascertain the truth; not to consider what particular cause may be either hindered or promoted.

At the beginning of our examination I think there is one point we should bear in mind, which is that we may not expect to discover the causes of great popular upheavals by a rationalistic examination of political projects. People are not discontented because they are theorizing; they are theorizing because they are discontented. We must always look into social conditions to find the sources of these movements. The reason is the servant of the will. We employ logic to defend a position we are impelled to take by circumstances. If we want to understand the causes of these movements now going on in this country in favor of new institutional forms, we must realize that we cannot do so by deductive reasoning starting with an abstract consideration of those forms. We must go back of them to the conditions that have suggested such proposals.

We have to do with a situation whose unsatisfactory character was recognized by the fathers themselves—by the framers of the constitution—but which they were unable to reach in their time. They were all opportunists—they had to be. They made such an application of means to ends as the opportunities of their time afforded. Nothing would have surprised the fathers more than the claims now sometimes made that the constitution should be considered as a perfect and complete embodiment of political wisdom, a settled and unchangeable scheme of governmental authority. It is a fact—which we soon discover when we go into original docu-

¹An address delivered at the University of Pennsylvania, March 7, 1912.

ments—that the American state was corrupt and incapable from the very start, and it was just because of the delinquency of state authority that the movement toward building up national authority, which is the extraordinary characteristic of our constitutional development, has operated so strongly throughout our history. All through the writings of the framers of our national constitution you will find anxious comments on the failure of state authority, the inability of the state to furnish satisfactory institutions, its want of capacity to discharge the primary functions of government. For instance, Mercer, of Maryland, a member of the constitutional convention, said that the great duty was to protect the people “against those speculating legislatures which are now plundering them throughout the United States.” Alexander Hamilton was in favor of having the President appoint the state governors, which would have put the states in about the same situation as the crown colonies of the colonial period. James Madison was in favor of giving the national government a veto power over every act of the state governments, which would put the states in the situation of the charter colonies. But this scheme of bringing back the states into subordination to authority had to be greatly modified—to a large extent abandoned in some of its features—because the small states could not be induced to agree to any arrangements that would subordinate them to the large states. Hence it was by a series of compromises that the constitution took the shape in which it appeared. James Madison was so chagrined over his failure to reform the states that he could not refrain from referring to it even when he was writing the series of newspaper articles addressed to the people of New York, now included in the volume known as the *Federalist*. He said: “The people will never be satisfied till some remedy be applied to the vicissitudes and uncertainties which characterize the state administrations.” And Jefferson himself, whose name is generally associated with the championship of state rights, in a letter to Madison under date of December 20, 1787, remarked: “The instability of our laws is really an immense evil. I think it would be well to provide in our constitution that there shall always be a twelve-month between the engrossing a bill and the passing it.”

Thus it appears that the popular upheaval that is going on to-day is no new tendency, no sudden thing, as some people seem to think. It is the continuance of a struggle that has been going

on ever since this country became an independent nation, to bring political institutions into harmony with the needs of the people. In their efforts to improve their institutions, in their search for a remedy for the evils of state administration, the American people from 1776 to 1909, produced 127 distinct state constitutions. We have no official record to which we can refer to find what number of constitutional amendments have been introduced in the states, so I am not aware of any exact statement of the constitutional amendments that have been brought forward in this country, but in the decade from 1894 to 1904, 381 amendments were proposed, of which 217 were adopted. Hence it would be a great mistake to think that anything like a settled form has ever been reached in our state constitutions. There has been a continual process of experimentation, and results have never yet been satisfactory. I looked with a great deal of interest at the latest edition of Ambassador Bryce's "American Commonwealth" to notice whether or not he had modified the judgments that he expressed in the first edition some twenty years ago. Mr. Bryce is a very friendly and sympathetic critic; he is a genuine admirer of the American people; but he uses such terms, when he speaks of New York politics—and of Pennsylvania politics also, I regret to say—as "stygian pool," "a witches' sabbath of jobbing, thieving and prostitution of legislative power." He repeats these expressions in the last edition of his "American Commonwealth," and he goes on to say that there has been no marked improvement in the situation, "the factors for good and evil having not greatly changed."

It would hardly be reasonable to expect that the people would be satisfied with an organization of public authority having such characteristics. I do not think our standards are particularly high. We should be satisfied with fairly decent government; we have never had efficient government and do not really know what it means. In looking over the consular reports, I noticed in the issue of November 10, 1910, an article relating to government enterprises in Saxony. Saxony is a small country compared with most of our states. It is about one-seventh the area of Ohio, and has about the same population. It appears from this report that in the fiscal year 1910-11, property owned by the state, and public business carried on by the state—forests, mines, factories, state railroads, and so on—yielded receipts aggregating \$58,734,323.

The expenditures amounted to \$45,266,542, and the net receipts—profit from public business apart from taxation—amounted to \$13,467,781. The gross receipts of Ohio in 1906 were a little over \$7,000,000 from all sources, although Ohio has immensely superior natural resources.

I mention the case of Saxony, not because it is peculiar, but because it is typical of what business competency in public affairs ought to be. It has an organization of public authority which produces business efficiency, whereas we have not yet been able to develop an organization of public authority in our states which can behave in such a way as to be characterized as decent in the estimation of impartial historians. In the writings of the great historian, McMaster, are to be found dismal records of the failure of the American state, of its inability to engage in undertakings common in other countries, of ghastly failure in business enterprises actually attempted. Wherever you examine the facts of the case you find a story of state delinquency and business failure. That the people should protest against such conditions evinces a very natural feeling of resentment. Moreover, you may notice that this resentment against existing conditions is now becoming more urgent and active, coincident with the development of social needs that are calling for augmented power in government. We are confronted by social problems of such intense quality that we must develop efficiency in government or else we shall suffer disastrously.

I have gone into these matters to create a proper background of thought in viewing the initiative, referendum and recall, for they are expedients that have been employed in the struggle to introduce better methods, to provide means by which public authority can be reorganized and brought more into harmony with public opinion. In considering them, we must discriminate between abstract merit and practical availability. If you will consider the course of public discussion on the subject, you will find that it falls into these two categories—that those who approach the subject on the side of abstract merit oppose these institutions, whereas those who approach them on the side of practical availability are apt to approve them. Those who approach them on the side of abstract merit are able to show that history has no good report to make of processes of direct legislation. In general it may be

said that every nation which had adopted such methods, relying upon them for the character of the government, has entered the road to ruin. I need not dilate on the well-known story of ancient commonwealths, but inasmuch as the experience of Switzerland is the chief modern example cited in favor of these institutions, it should be observed that the present reputation of Switzerland for honest and efficient government is of recent origin. Swiss politics have been purified by the working of representative institutions superimposed upon their ancient forms of direct legislation of which the relics still exist. The referendum may be traced back to ancient times. So long as the people were dependent upon it they did not obtain good government. Even now, it is a point in dispute whether it is really valuable, even as an auxiliary to the representative system.

Reviewing the evidence as to the working of such institutions in Switzerland, one conclusion which it is safe to draw is that they are not an agency of progress, but they are rather obstructive and conservative in their practical operation. That is to say—to use the language of our own politics—they constitute a stand-pat rather than a progressive agency, and for that very reason the referendum is opposed by the Liberal party in England. At this very time we have this curious situation, that in England the Conservative party, that has inherited Tory traditions, is in favor of the referendum, while the Liberal party opposes it. Liberal leaders say it is a means of obstructing and delaying measures conceived in the interests of the people. At the last session of parliament, extensive measures of social reform were passed including an elaborate state insurance bill. The representatives of the people deliberated on these measures and when they took action that expressed the will of the people. Under the referendum the action of parliament would not be conclusive. Proceedings could be delayed; and just that very thing took place in Switzerland upon almost the same kind of a measure. If you consult the *Daily Consular and Trade Reports*, March 1, 1912, you will find a record of the final enactment of the Swiss federal insurance law. It passed both chambers on June 13, 1911, but the opponents of the law mustered up enough votes to call a referendum, so the final enactment did not take place until February last, a delay of over seven months. The case illustrated one point which President Lowell makes against the practical working of the referendum, namely, that measures passed in the interests of the working class—

of the poorer members of the community—may be held up and perhaps thwarted by the action of employers in getting up a call for a referendum. These are considerations that should be taken into account in estimating the value of these agencies.

But we have now to consider the argument from the side of political availability, and there we have a very different situation to consider. I must admit that my own views on this subject have been affected by a visit which I paid to Oregon a little over a year ago, where I had the opportunity to meet the people who are leading in this movement. I found that they scouted the idea of being in love with the initiative and referendum, except as an emergency measure. To talk to them of the superior advantages of representative government would be like talking to a man in a swamp about the superiority of an automobile to a scow. He would grant you that, but he would say: "Just now I need the scow; after I get out of this swamp I will use the automobile." They do not seek to destroy representative government; they want to get rid of a base imitation and introduce the real thing. When they accomplish the reorganization of public authority that they intend, they expect to drop the initiative and referendum out of ordinary use. They will then be kept in reserve simply for emergency use.

Under existing conditions some positive advantages are claimed for the initiative and referendum, as follows:

(1) *They avoid inequalities of legislative apportionment.*

Among the ideas that have come down to us from the eighteenth century is the one that there is something in the nature of superior civic quality in the votes of people that live in the country. When you examine the facts of the case you do not find it so. Practical politicians will tell you that the rural vote may be a bribe-taking vote. And yet our state constitutions seem to be generally framed on the assumption that country districts ought to be allowed greater political weight than city districts. So our legislatures are generally made up in a way grossly disproportionate in their representative arrangements. A small county will be given as great representation in a state senate as a large one, and cities are denied proportionate representation. The inequality is the more serious, since we allow senates more power than is allowed to them in any other country. In Canada they have no senates except in Quebec and Nova Scotia. All that great range of provinces on our northern border—Ontario, Manitoba,

Saskatchewan, Alberta, British Columbia—are without a senate. It is urged in behalf of the initiative and referendum that they afford means of escaping the system of minority rule that is now intrenched in our legislatures. If the people may resort to the initiative, then laws demanded by public opinion cannot be defeated by minority interests occupying positions of unjust advantage. That is a matter of great practical importance in some of our states.

(2) *They escape legislative obstruction to constitutional amendment.*

Our state constitutions put massive obstacles in the way of constitutional amendment. Proposals must run the legislative gauntlet in successive sessions. Moreover, the form of amendments may be subjected to sinister manipulation. All such barriers and difficulties are avoided by the initiative, which provides for direct appeal to the people. One of the constitutional reforms advocated in Oregon is the abolition of the state senate. What chance would there be for getting such a proposal before the people if the senate had to be asked for its permission?

(3) *They provide means of political action apart from those controlled by special interests and free from the secret entanglements of the legislative committee system.*

In our legislative bodies control over legislation is turned over to committees. The legislature is cut up, broken into fragments, and each fragment may have the power of frustrating or perverting action on the public business. Legislation becomes a matter of give and take, of bargain and deal. The control of legislative procedure by committees is a constitutional anomaly. There are more standing committees in the Pennsylvania legislature than in all the commonwealths of the British nation together. There are but four standing committees in the English parliament to transact the business of the whole empire. In Swiss commonwealths the ordinary practice is for the executive council to prepare all bills for legislative consideration. Under our system, with the facilities that exist for delaying and perverting legislation in committee rooms, almost revolutionary force is necessary before the complicated machinery will yield to the pressure of public opinion. The initiative and referendum provide means of escape from such difficulties.

(4) *The initiative and referendum make for more careful legislation.*

This claim may seem paradoxical, since it is generally supposed

that it is the peculiar merit of representative government that it ensures deliberate action. How then, it may be asked, is it possible to claim that direct action by the people themselves will produce more careful legislation. Well, as regards representative government genuinely constituted, such a claim would appear absurd; but not so as regards the sort of government we do have, that pretends to be representative but is not really so. Hence it is that Governor Wilson supports the initiative and referendum, from the standpoint of practical availability, although in his treatises on government he has described such devices as inferior to representative government. In his speech at Kansas City, May 5, 1911, he said:

If we felt that we had genuine representative government in our state legislatures, no one would propose the initiative and referendum in America.

But, it may be said, we do have elections for the choice of representatives, and the representatives meet in legislative session, so how then can it be averred that we do not now have representative government in America? The answer is that the representatives act under conditions that make them the agents of special interests rather than representatives of the people. The quality of power is determined not by the conditions under which it is gained but by the conditions under which it is exercised. If conditions permit those in the representative position to use their opportunities for themselves and their clients, then, instead of acting as a control over the government in behalf of the people, representative institutions are converted into agencies of class advantage and personal profit. Conditions have been introduced in this country which have brought about just that result. That is the prime cause of the public discontents that are now having varied manifestations. As Edmund Burke pointed out in his classic essay on the cause of the public discontents of his time:

When the people conceive that laws and tribunals, and even popular assemblies, are perverted from the ends of their institution, they find in the names of degenerated establishments only new motives to discontent.

The American people despise legislatures, not because they are averse to representative government, but because legislatures are in fact despicable. In view of what I have quoted from Ambassador Bryce as to the actual character of American legislatures, is it at all surprising that the American people should become impatient of their behavior?

When an American legislature meets its first concern is a distribution of patronage among its members. In other countries all appointments to office are made by the executive; the legislature does not participate, and hence it acts as a check upon extravagance. The ability of American legislatures to provide offices and salaries for attendants is a corrupting influence of immense power. The immediate effect is an irresistible pressure towards extravagance, as it is the aim of members to get as much patronage as possible. Hence it is that almost every session of an American legislature is attended by pay-roll scandals, and the freedom of action of members is compromised by the obligations they incur as office-brokers.

When the legislature gets to work there is nobody representing the community as a whole with power to propose measures and bring them to vote. Numerous bills are introduced and referred to standing committees. The number of bills introduced in a session ranges from about 1,200 in the smaller states up to 4,000 or over in Pennsylvania or New York. In the British parliament, with the affairs of an empire to administer, there are about 800 bills introduced in a session. In a Canadian provincial parliament the number is about 150. In such circumstances as these, where the representatives can act as a body of critics, discussing the estimates and proposals of the administration you have representative government. But when the bills are thrown in by thousands, and put through by logrolling you have only a wretched travesty of representative government. In this way a mass of crude, obscure, sinister, perverted legislation is dumped into our statute books year after year. The courts have frequently to go behind the language of the law and guess at the legislative intent. As a consequence the judiciary has virtually annexed the legislative function.

It is in comparison with this chance medley and not in comparison with the deliberate procedure of representative government as exemplified in England and in Switzerland, that the claim is advanced that the initiative and referendum make for more careful legislation. Before a law is submitted by that process it undergoes a course of careful preparation. Drafts are passed from group to group of people, for examination and criticism. The phraseology is carefully scrutinized, and gradually perfected, for once it goes upon the voting papers it is not open to amendment, and the exposure of a defect might frustrate the movement for that year at least. From personal

investigation of the case I am satisfied that the process of legislation by initiative as practised in Oregon does provide for more careful legislation than the ordinary procedure in an American legislature.

(5) *The initiative and referendum clear the way for a reorganization of public authority.*

The force of this claim will be admitted by anyone who will take the trouble to examine the scheme of government that the Oregon reformers are trying to introduce. It would be hopeless to expect that it could ever get through a legislature of the type now existing. To propose it to the legislature would be inviting that body to commit suicide, for it abolishes the senate and provides for a representative assembly of a different type from anything now known in this country although much like that found in Canada and other English commonwealths. The governor is to appoint his cabinet associates and he will sustain about the same relation to the assembly as the president of a joint-stock company does to its board of directors. The ambushes and concealments of the legislative committee system will be swept away. The governor will have the right to introduce his measures and if the assembly reject them he is to have the right to call a referendum and lay them before the people. It will be seen that the movement is far more than an amendment of the present state constitution; it proposes a new state constitution. It can have no chance of success unless it can find an outlet distinct from any channel of action allowed by the present state constitution. So likewise the movement which substituted our national constitution for the articles of confederation had to find a new channel. That movement was started by voluntary initiative outside of the federal legislature and outside of the system provided by the articles of confederation.

I do not deny that there are risks—grave risks—attending any process of constitutional change by initiative. The case of revolutionary France has not lost its pertinence. Mistakes may be and doubtless will be made. But the risks are limited by the essentially municipal character of the American state. The trouble that may ensue from experimentation can hardly be greater or more varied than that which has attended experimentation in city government. If anywhere an efficient organization of state authority is produced, the type will spread like the commission plan of city government. The Oregon movement is pregnant with developments of the greatest hope and promise.

And now, what about the recall. Here again, I must distinguish between the principle and the application. The essential principle of the recall is that a public servant may be dismissed if his conduct does not give satisfaction. Is there anything unconstitutional about that? It is not so regarded in the organization of business authority. A common provision of the by-laws of a business corporation is that any agent or employee of the corporation may be dismissed by the board of directors "with cause or without cause." It is a deposit of sovereignty which in practice does not tend to instability of tenure. Capable employees go on holding their places year after year, although their tenure is subject to the pleasure of the directors. It is the same with English municipal corporations. Employees hold their places during the pleasure of the mayor and city council, but in practice their tenure is permanent during good behavior. That is the general rule of English government. Every administrative officer holds office, not for any particular term, but during good behavior, of which the head of the administration is the judge. The case of judges differs only in that in their case parliament is the judge of their behavior. Any judge may be removed by the head of the administration upon the address of the House of Commons. The process is not one of impeachment, or of trial, but is an act of sovereignty, subject to no conditions save such as are voluntarily imposed. Instances of the actual exercise of this power of judicial recall are rare, for it is so incontestible that judges behave themselves in such a way as not to arouse it to action. An incomplete instance is, however, afforded by certain proceedings taken last year in regard to an English judge who had given offense. Here is the report which appeared in the weekly edition of the *London Times*, March 3, 1911:

In the House of Commons on Wednesday, Mr. Rendall asked the prime minister if he could yet inform the house in what way the government proposed to deal with the unique situation resulting from the speech of Mr. Justice Grantham at Liverpool on February 7. The prime minister said: His Majesty's government have given full consideration to this matter, the gravity of which, as I said the other day, they entirely recognize. They observe with satisfaction and without surprise that the speech referred to has been universally and emphatically condemned by professional and public opinion. In the hope and belief that this unanimous verdict of censure may prevent the recurrence of an incident so inconsistent with the judicial character and the best traditions of the bench, they do not propose to invite parliament on this occasion to take the extreme step of addressing the crown for the removal of the judge.

It is plain from this that the attitude of the House of Commons to judges is virtually this: Be on your good behavior or we will remove you.

Another instance of this constitutional relation is afforded by language used by a leading member of the English government—Winston Churchill—when, as home secretary, he presented a bill dealing with the subject of crime committed by aliens. An existing law provided that an alien convicted of crime could be deported on the certificate of the judge sitting in the case. He remarked that there was no need for more law in that respect, but what was needed was additional means for securing the enforcement of the law. The weekly edition of the *London Times*, for April 21, 1911, says in its report of the speech:

He called particular attention to the comparatively small number of convicted aliens who were recommended for expulsion by the courts. With a view to increasing the number of expulsions, he proposed in his bill that whenever a court did not recommend expulsion, it should be called upon to furnish its reasons.

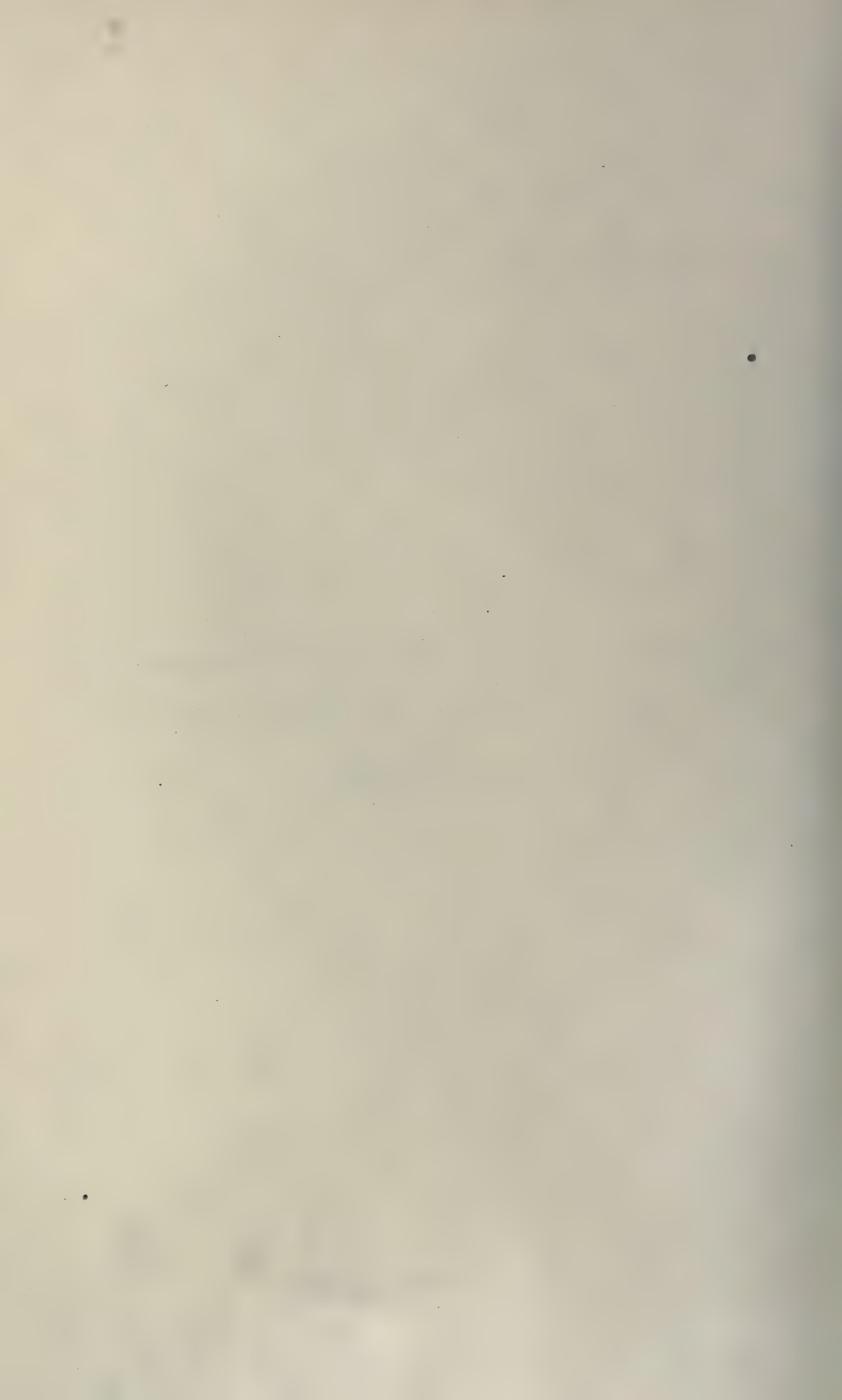
This attitude towards the judges implies that if they fail to show good reasons they may be removed. Do English courts suffer in dignity and efficiency because the judges are thus subject to recall? Not at all. On the contrary, that very fact exalts the judicial position. The judges sit as the full representative of the sovereign power of the state. They are trusted with immense power because that power can be withdrawn at any time if misused. But when the judiciary is treated—as in this country—as an independent and co-ordinate branch of the government, the theory by its own terms makes the judges representative of only a fraction of sovereignty, and their behavior is accordingly subjected to conditions and limitations unknown to English courts. When we compare the decay of public justice in this country with the efficient administration of justice in the English courts, can there be any doubt as to which system possesses actual superiority in quality of jurisprudence? It is generally assumed that, whatever may be the abstract merits of the case, the English mode of recall is incompatible with our constitutional system. Well, so far as our states are concerned, there is a chaos rather than a system, but the English mode certainly exists in Massachusetts. Nor can I find anything inconsistent with it in the constitution of the United States. The supposition that there is no way of getting rid of a misbehaving judge save by impeachment proceedings,

is not supported by the language of the constitution itself. Article III, on the judicial power, provides that judges "shall hold their offices during good behavior," and that their compensation "shall not be diminished during their continuance in office." Who is to be the judge, if it is not the body corresponding to the House of Commons? The provision for impeachment is contained in section 4 of article II, dealing with the executive power. It provides that "the President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors." If judges can be removed only by proceedings under this section then mere avoidance of crime must be held to constitute good behavior, which is an absurd conclusion. In 1802, when the framers of the constitution were still on the stage of affairs, congress, with the approval of the President, abolished a number of courts and dismissed their judges from office. I commend that precedent to the consideration of those who think that the judicial recall is inconsistent with the constitutional ideas of the founders of our institutions.

Very different considerations arise, however, when we examine the proposition that judicial recall shall be allowed upon popular petition. The principle of recall is constitutional; indeed, it may be questioned whether constitutional government can really exist without it. The essence of constitutional government is that for every act of power there shall be a responsible agent. This principle is violated when any agent is so situated that he cannot be reached and removed if need be. It is also violated if the process of removal is carried on in an irresponsible way. Removal through the address of the representatives of the people, approved by the administration, accepts a direct responsibility to public opinion for the proceeding and its results. But what responsibility would attach to a movement carried on by petition-pushing along the streets? Is it not plain that it may put vast irresponsible power in the hands of faction? In practice, it would mean that any political machine could exert pressure upon the courts through power to hurl a judge into the arena to fight for his life. The widespread demand for the recall expresses a sound constitutional instinct, but it is liable to go astray and deviate from democracy into ochlocracy. The present state of things is so intolerable that change is inevitable. Genuine conservatism will be shown, not in resistance to change, but in wise guidance of change.

PART TWO

*Provisions for and Results Obtained by
the Initiative, Referendum
and Recall*



PROVISIONS FOR STATE-WIDE INITIATIVE AND REFERENDUM

By C. B. GALBREATH,

Secretary of the Ohio Constitutional Convention, and former
State Librarian of Ohio.

Among the subjects of popular discussion, the initiative and referendum just now holds a prominent place. Considered an essential part of the progressive program of which we hear so much, it is lauded by its enthusiastic advocates as a panacea for the ills of representative government and denounced by its antagonists as the subtle and sinister instrument of revolution, designed to work the ultimate overthrow and ruin of republican institutions. By many it is regarded as a recent innovation, a veritable *res nova*, with all the interest that attaches to a marvelous political elixir, just discovered, in regard to whose virtues the savants and the proletariat are still somewhat at variance among themselves. A little investigation, however, reveals the fact that it is only in comparison with the recent past that this system can claim the charm of novelty. "It hath been already of old time which was before us," and if there be new things under the sun, the initiative and referendum is not one of them.

Direct legislation is the natural and convenient expression of the will of a comparatively small, self-governing, independent state. The pure democracies of ancient Greece and their less conspicuous successors down to the early settlement of America bear testimony to this fact. It was so among the primitive German tribes in the time of Tacitus. Examples were not wanting in the middle ages. High among the Alps, where the eagle soars, where the snow falls and freedom dwells, even unto this day a sturdy race realizes in large measure the sovereignty of man and the dream of liberty. It was left to Switzerland to preserve and hand down to our own time the initiative and referendum. The development of the system in this Alpine federation is fully presented on succeeding pages, and even a brief summary here would seem superfluous.

Direct legislation has been an important feature of the govern-

mental system of Switzerland from the beginning of its history. In the landsgemeinde generations ago the Swiss yeomanry assembled at least once a year to elect officers and enact laws. This primitive legislative assembly met in an amphitheater of "venerable woods" and "everlasting hills," under the wide and open sky through which the spirit of light and freedom descended like a benediction from on high. In this atmosphere of freedom and equality the cantonal democracies of Switzerland evolved through the centuries. Changes have come; written constitutions have taken the place of custom and precedent, and in the larger divisions of the federation the representative system of government prevails, but in the smaller cantons the picturesque popular assembly of all the free citizens still meets to legislate for the common weal.

A distinction, of course, may be drawn between direct legislation through such an assembly and direct legislation through the ballot box. On this subject M. Welti, himself a member of the Swiss federal assembly, in a speech against the referendum twenty years ago, declared:

"The landsgemeinde has nothing in common with the referendum. It is a real and living thing, while the other is nothing but a dead form of democracy on paper. In the landsgemeinde each man feels that he is also a citizen. In the referendum the ballot-paper is his substitute."

In the last thirty-five years, however, the initiative and referendum has been in operation, through the "ballot-paper," under the confederation of Switzerland and for varying periods in a number of cantons. The results have called forth a variety of testimony in Switzerland and beyond its borders, opinions not infrequently taking the direction of the preconceived bias of the critic. After all has been said, the fact remains that there is no pronounced disposition among the Swiss people to surrender the power reserved to them in the initiative and referendum. They prefer to keep it, to exercise and perfect it in the light of experience.

The results of Switzerland's experiments have reached far beyond her borders. Her legends of liberty are household treasures of the world. Her free institutions have been the inspiring theme of those struggling for freedom and independence. Her contribution to direct legislation has attracted in recent years the attention of citizens of our own country who have been convinced that our representative

system of government is not without its defects, that it has proven inadequate to the test of this commercial age, that it needs the sustaining and ever-present power of the people whose interests alone it was created to subserve.

The referendum in various forms has long been familiar to Americans. Its use in adopting constitutions and constitutional amendments dates back to the Revolution. In place of the *landsgemeinde* New England presents the town meeting in which the whole citizenship meet in legislative capacity to enact laws of local application. Mr. Bryce has given an interesting comparison of the two in his "The American Commonwealth."

The revolutionary period furnishes a solitary instance of provision in the state constitution for the initiative. On October 1, 1776, a convention assembled in Savannah, Georgia. It formulated a very progressive constitution for the time, which contained among other things the following section:

"No alteration shall be made in this constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of the voters in each county within the state; at which time the assembly shall order a convention to be called for that purpose, specifying . . . the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid."

It is in comparatively recent years, however, that practical application has been made of the principle of the state-wide initiative and referendum. The Farmers' Alliance some years ago had endorsed these agencies. About the same time it found its way into the platform of the populist party. In 1894 the Direct Legislation League was formed, and a more systematic propaganda was organized for the introduction of the Swiss form of the initiative and referendum into all of the states, and it was even proposed to extend it to the federal government. At first the movement appears to have been without financial support, except such as was gathered in meager voluntary subscriptions from the slim purses of a few converts and enthusiastic advocates. The organ of the league, the *Direct Legislation Record*, edited by Eltweed Pomeroy, had a limited circulation and in a few years it suspended publication. The *Arena*, which promptly took up the battle and waged it right valiantly under the editorial leadership of B. O. Flower, was not financially much more

fortunate. The various publications devoted to the advancement of the cause of direct legislation in America, however, had, from 1890 to 1897, a wonderful influence, and leagues organized in the interest of this reform sprang up in many states. It was powerfully aided by organized labor, Powderly, Gompers and Sullivan early giving it substantial support.

The work in behalf of the state-wide initiative and referendum was to win its first signal success in the State of South Dakota. When the Knights of Labor were in their ascendancy in 1885, Rev. Robert Haire, a Catholic priest, now of Aberdeen, that state, proposed what he termed the "people's legislature," which included the principles of the initiative and referendum. He advocated this for a time until the Swiss system was brought to his attention. His enthusiasm was not abated but he perhaps slightly modified his views. Henry L. Loucks, now of Watertown, South Dakota, became president of the Farmers' Alliance. In this position he took up Father Haire's ideas and succeeded in having them incorporated in the platform of the National Farmers' Alliance. Loucks and his followers earnestly advocated the adoption of the initiative and referendum. In 1897 their views gained ascendancy in the state legislature and that body submitted to the people an initiative and referendum amendment to the constitution. This was ratified by the electors of the state at the November election in 1898, by a decisive majority.

The movement thus effectually inaugurated has since been steadily gaining ground. The following significant summary presents the

Progress of the Initiative and Referendum in America

- 1897. South Dakota legislature voted to submit an initiative and referendum amendment to constitution.
- 1898. The electors of South Dakota adopted initiative and referendum amendment by vote of 23,876 to 16,483.
- 1899. Oregon legislature voted to submit initiative and referendum amendment to constitution.
Utah legislature voted to submit initiative and referendum amendment to constitution.
- 1900. The electors of Utah adopted initiative and referendum amendment by vote of 19,219 to 7,786.

1901. Oregon legislature a second time, as required by constitution, voted to submit initiative and referendum amendment to constitution.
Nevada legislature voted to submit referendum amendment to constitution.
1902. The electors of Oregon adopted initiative and referendum amendment by vote of 62,024 to 5,668.
1903. Nevada legislature a second time, as required by constitution, voted to submit referendum amendment to constitution.
Missouri legislature voted to submit initiative and referendum amendment to constitution.
1904. The electors of Nevada adopted referendum amendment to constitution by vote of 4,393 to 702.
The electors of Missouri defeated initiative and referendum amendment.
1905. Montana legislature voted to submit initiative and referendum amendment to constitution.
1906. The electors of Oregon adopted supplemental initiative and referendum amendment to constitution by vote of 46,678 to 16,735.
The electors of Montana adopted initiative and referendum amendment by vote of 36,374 to 6,616.
1907. The electors of Oklahoma adopted a state constitution, including provisions for the initiative and referendum, by vote of 180,333 to 73,059.
North Dakota legislature voted to submit initiative and referendum amendment to constitution. The following legislature failed to submit amendment as required by constitution.
Maine legislature voted to submit initiative and referendum amendment to constitution.
Missouri legislature voted to submit initiative and referendum amendment to constitution.
1908. The electors of Missouri adopted initiative and referendum amendment by vote of 177,615 to 147,290.
The electors of Michigan adopted a constitution containing provision for referendum on laws and initiative on constitutional amendments by vote of 244,705 to 130,783.
1909. Arkansas legislature voted to submit initiative and referendum amendment to constitution.

- Nevada legislature voted to submit initiative amendment to constitution.
1910. The electors of Arkansas adopted initiative and referendum amendment by vote of 91,367 to 39,111.
Colorado legislature voted to submit initiative and referendum amendment to constitution.
The electors of Colorado adopted initiative and referendum amendment by vote of 89,141 to 28,698.
1911. California legislature voted to submit initiative and referendum amendment to constitution.
The electors of California adopted initiative and referendum amendment by vote of 168,744 to 52,093.
Nevada legislature a second time, as required by constitution, voted to submit initiative amendment to constitution.
Washington legislature voted to submit initiative and referendum amendment to constitution.
Nebraska legislature voted to submit initiative and referendum amendment to constitution.
Idaho legislature voted to submit initiative and referendum amendment to constitution.
Wyoming legislature voted to submit initiative and referendum amendment to constitution.
Wisconsin legislature voted to submit initiative and referendum amendment to constitution.
North Dakota legislature voted to submit initiative and referendum amendment to constitution.
The electors of Arizona adopted a constitution containing provision for the initiative and referendum by vote of 12,187 to 3,822.
The electors of New Mexico adopted a constitution containing provision for the referendum by vote of 31,742 to 13,399.
1912. The electors of Washington will vote on adoption of initiative and referendum amendment at the November election.
The electors of Nebraska will vote on the adoption of initiative and referendum amendment at the November election.
The electors of Idaho will vote on the adoption of initiative and referendum amendment at the November election.
The electors of Wyoming will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Wisconsin will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Nevada will vote on the adoption of initiative amendment at the November election.

The electors of Indiana will vote on the adoption of a constitution, containing provision for the initiative and referendum, at the November election.

The constitutional convention of Ohio has submitted a series of amendments to its constitution, including one providing for the initiative and referendum. These will be voted on at a special election, September third.

1913. North Dakota legislature will consider, the second time, amendment to the constitution providing for initiative and referendum.

Not only has the movement for direct legislation captured a number of states and prepared the way for sweeping victories in others at the coming fall election, but it has also made converts of a number of distinguished public men, notably William Jennings Bryan, Woodrow Wilson and Theodore Roosevelt, to say nothing of a goodly array of governors, United States senators and members of the national house of representatives. In these later days, even the so-called conservative or reactionary statesmen with political ambitions seek to avoid expressing an adverse opinion on this popular tenet of the progressive faith.

South Dakota

South Dakota, as we have seen, was the first state to adopt an initiative and referendum amendment to its constitution. The provisions of this amendment are briefly expressed and comprehensive. The people reserve to themselves the "right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect." These reserved powers or "rights," as they are called, are, of course, respectively the initiative and the referendum. It is further provided that "not more than five per centum of the qualified voters of the state shall be required to invoke either the initiative or the referendum;" that the governor shall not veto measures enacted by vote of the people;

and that the legislature shall enact laws carrying into effect the provisions of this section of the constitution.

In 1899 the legislature of South Dakota passed a law supplementing and carrying into effect in somewhat extended detail the initiative and referendum amendment to the constitution ratified by the people the previous year. This law provides that when initiative petitions, properly signed, are filed with the secretary of state, that officer shall transmit them forthwith to the legislature when in session or promptly on the convening of the first subsequent session. The legislature is required to "enact and submit all . . . proposed measures to a vote of the electors of the state at the next general election." No provision appears to be made for the amendment of proposed measures or the submission of similar competing measures by the legislature. The referendum is authorized on all laws except those "necessary for the immediate preservation of the public peace, health and safety, support of the state government and its existing institutions," on the filing of petitions, signed by not less than five per centum of the electors, with the secretary of state, not later than ninety days after the close of the session of the legislature in which such laws were enacted. An act sustained by a majority of all the votes cast thereon becomes a law; an act which fails to receive such majority is made of non-effect or vetoed. The law requires that the ballot used at elections must contain the full text of the initiative and referendum measures submitted to the people. At some recent elections these ballots have been of extravagant length and have frequently been exhibited by opponents of direct legislation as an awful example of a foolish and revolutionary innovation. The law also provides for the initiative and referendum in "cities and towns," on petitions signed by five per centum of the electors residing in such municipalities.

The essential provisions of the South Dakota plan, it will be seen, include a brief constitutional provision, general and mandatory in form, providing for the initiative and referendum; and an act by the legislature, authorizing in detail the application of the system. It was evidently the purpose of those who framed the constitutional provision, in conformity with approved custom, to limit the constitution to an organic provision and to leave to the legislature all statutory enactments elaborating such provision. The results were apparently satisfactory to the friends of the reform.

Until the year 1908 the people of South Dakota made no use of the state-wide power, secured to them through legal enactment nine years before. In that year the referendum was invoked against laws passed at the previous session of the legislature and with them was submitted to the people a law brought before the legislature by initiative petition. At the next general election in 1910 six laws were submitted to the electors of the state. At this same election the legislature submitted to the people six constitutional amendments. These latter were not invoked by petition, but the votes on them are given in the following table for purposes of comparison:

INITIATIVE AND REFERENDUM VOTES IN SOUTH DAKOTA

	Yes.	No.	Majority Approving	Majority Rejecting	Percentage of Total Vote
1908					
Local option liquor law.....	39,075	41,405	.....	2,330	70
Divorce law.....	60,211	38,794	21,417	.....	87
Quail law.....	65,340	32,274	33,066	.....	86
Sunday law.....	48,378	48,006	372	.....	85
(Total vote for governor, 113,904.)					
1910					
LAWS					
County option.....	42,416	55,372	.....	12,956	92
Electric headlights on locomotives.....	37,914	48,938	.....	11,028	82
"Czar" law, suspension from office by governor.....	32,160	52,152	.....	19,992	80
Embalmers' law.....	34,560	49,546	.....	14,986	80
Congressional districts.....	26,918	47,893	.....	20,975	70
Militia.....	17,852	57,440	.....	39,588	71
CONSTITUTIONAL AMENDMENTS					
Renting lands.....	48,152	44,220	3,932	.....	87
Salary, attorney-general.....	35,932	52,397	.....	16,465	83
Equal suffrage.....	35,289	57,709	.....	22,420	88
Debt limitations.....	32,612	52,233	.....	19,621	80
Revenue amendment.....	29,830	52,043	.....	22,213	77
New institutions.....	36,128	47,625	.....	11,497	79
(Total vote for governor, 105,801.)					

While the initiative and referendum has not been long in operation in South Dakota, the people of that state are forming opinions in regard to its practical workings. In a recent letter Governor R. S. Vessey says:

"I might say that the operation of these laws in South Dakota has been generally successful and satisfactory, but in my judgment the practical efficiency thereof would be materially increased and the interests of the majority better safeguarded if the percentage of voters necessary to either initiate or refer a measure were increased considerably."

Utah

Following the example of South Dakota the people of Utah in November, 1900, adopted an amendment to the constitution of that state. This amendment was drawn on the same general plan as that of South Dakota. The following excerpt includes its essential provisions:

"The legal voters, or such proportional part thereof, of the State of Utah, as may be provided by law, under such conditions and in such manner as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those passed by a two-thirds vote of the members elected to each house of the legislature) to be submitted to the voters of the state before such law shall take effect."

This provision might have been more happily worded, but its purpose is clear and sufficiently definite. In one particular it differs from the corresponding provision of the constitution of South Dakota. In the latter the legislature is required to enact supplemental legislation; in the former the legislature is simply permitted, not directed, to do this. The Utah amendment also authorizes the legislature to extend the initiative and referendum to legal subdivisions of the state. Up to the present time the legislature of Utah has not chosen to enact laws carrying into effect these sections of the constitution providing for direct legislation.

The experience of this state has doubtless had something to do with the form of similar sections that have since been incorporated in the constitutions of other states. The friends of the movement for direct legislation in later years have been insistent that constitutional provisions embracing their reform shall be set forth in such details and at such length that they will be self-executing, and, as far as possible, self-sufficient to secure to the people the exercise of the reserved power, even without supplemental enactments by the

legislature. "To make sure of it, we will put it into the constitution, so that we shall not be dependent upon the legislature for the opportunity to exercise the reserved power," they say; and as a result we find recent constitutional provisions for the initiative and referendum somewhat extended and arrayed in some instances in all the prolixity of statutory verbiage. To guard the interests of the people against the real or imaginary designs of the legislature, there has been recently a growing disposition to ignore the distinction between organic and statutory law and an increasing tendency to "legislate in the constitution."

Oregon

The name of Hon. W. S. U'Ren has been prominently identified with the movement in Oregon from its inception down to the present time. In 1892 he organized the Oregon Direct Legislation League, of which he was chosen secretary, a position that he held for ten years—until the initiative and referendum amendment became a part of the constitution of that state. In 1895 he appeared before the legislature of Oregon as the agent of various organizations interested in the movement. In this work he was active and indefatigable. Through the various societies that he represented, he distributed 70,000 pamphlets in English and German, presented to the legislature petitions signed by 13,000 people and secured endorsements of political parties at state and local conventions. The measure for which he labored earnestly in that year failed on a tie vote in the state senate and by only a single vote in the house. Shortly afterward he wrote to a fellow-worker:

"We are sure of success soon. No great reform ever made such great strides before. Two years and two months ago not one man in a thousand in Oregon knew what the initiative and referendum meant. To-day I believe that three-fourths of the intelligent voters understand and favor this revolution."

Later elected to the legislature, he found opportunity to press more vigorously and effectively his propaganda. Finally, in 1899, the initiative and referendum amendment passed the Oregon legislature, and, in compliance with constitutional requirement, passed that body again in 1901 and was submitted to the people the year following. U'Ren and his friends had done effective work. The amendment was adopted by the decisive majority of 62,024 to 5,668.

A number of causes made Oregon a fruitful field for this work. The action of the legislature of that state for a number of years had been most unsatisfactory. Domination by powerful industrial and financial interests was frequently charged. The lobbyist plied his work openly and unrebuked. The struggle over the election of United States senators, frequently bitter and prolonged, at times discredited the state and deprived it of its proper representation in the senate of the United States. The popular prejudice against state legislatures was especially strong in Oregon. The people were ready for a change that held forth a prospect of a new and improved political order of things.

As the initiative and referendum powers have been more extensively used in Oregon than in any other state, the essential portion of the amendment conferring them is here reproduced in full:

ARTICLE IV

SECTION 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the biennial regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which

the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

SEC. 1a. The referendum may be demanded by the people against one or more items, sections or parts of any act of the legislative assembly, in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to all local, special and municipal legislation of every character, in and for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town.

Laws have been passed providing in detail for carrying out the foregoing sections of the constitution. Provision has also been made for supplying people with information relative to the measures upon which they are called to vote. Interested persons may prepare arguments or explanations for or against proposed measures submitted at the same election, which with the full text of these measures are printed and bound together by the secretary of state and by him distributed to each elector. The expense of preparing and printing the argument or explanation must be borne by the person or persons furnishing the same.

The results of direct legislation in Oregon are presented on pages 94-97.

The limitations of this article will not permit comment on the various measures enumerated in the following table. Oregon, as previously stated, has had a larger experience than any other state in testing the initiative and referendum. Just why this has been true we may not be able to answer fully. The thorough propaganda that preceded the introduction of the system in the state evidently aroused in the people a desire to make use of it when the power was conferred. Mr. U'Ren and his friends were thoroughly in earnest. They did not aid in placing this amendment in the constitution for ornamental purposes. Their organizations were retained and strengthened for the exercise of the new powers reserved to the people.

VOTES ON INITIATIVE AND REFERENDUM MEASURES SUBMITTED IN
OREGON, 1902-1910

The following table gives the votes on measures since the introduction of direct legislation in Oregon and shows what percentage of the total vote for candidates was cast on each measure:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
ELECTION 1902					
<i>Total Vote 92,920</i>					
Original initiative and referendum amendment.....	62,024	5,668	56,356	.....	73
ELECTION 1904					
<i>Total Vote 99,315</i>					
Local option liquor bill ¹	43,316	40,198	3,118	.....	84
Direct primary bill ¹	56,205	16,354	39,851	.....	73
ELECTION 1906					
<i>Total Vote 96,751</i>					
Woman suffrage amendment ¹	36,928	46,971	.....	10,043	87
Amendment applying initiative and referendum to acts of legislature affecting constitutional conventions and amendments ¹	47,661	18 751	28,910	.....	69
Amendment to give cities and towns exclusive power to enact and amend their charters ¹	52,567	19,942	32,625	.....	75
Amendment authorizing the legislature to fix the compensation of state printer ¹	63,749	9,571	54,178	.....	76
Amendment for initiative and referendum on all local laws ¹	47,778	16,735	31,043	.....	67
Bill proposing change in local option law (proposed by liquor interests) ¹	35,397	45,144	.....	9,747	83
Bill for state-ownership of a toll road ¹ ...	31,525	44,525	.....	13,000	79
Anti-pass bill (railroad) ¹	57,281	16,779	40,502	.....	76
Bill for tax on gross earnings of sleeping, refrigerator, and oil car companies ¹ ..	69,635	6,440	63,195	.....	79
Bill for tax on gross earnings of express, telegraph and telephone companies ¹ ..	70,872	6,360	64,512	.....	80
Omnibus appropriation bill for the maintenance of state institutions ²	43,918	26,758	17,160	.....	73
ELECTION 1908					
<i>Total Vote 116,614</i>					
Amendment increasing compensation of members of the legislative assembly ³ ..	19,691	68,892	.....	49,201	76
Amendment relating to location of state institutions ³	41,975	40,868	1,107	.....	71
Amendment increasing the number of judges of the supreme court and making other changes relative to the judiciary ³	30,243	50,591	.....	20,348	69

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Amendment changing time of holding general elections from June to No- vember ³	65,728	18,500	47,138	.....	72
Bill relative to the custody and em- ployment of county prisoners ²	60,443	30,033	30,410	.....	78
Bill requiring railroads to give public officials free passes ²	28,856	59,406	.....	30,550	76
Bill appropriating \$100,000 for ar- mories ²	33,507	54,848	.....	21,341	76
Bill to increase appropriation for state university ²	44,115	40,535	3,580	.....	72
Woman suffrage amendment ¹	36,858	58,670	.....	21,812	82
Fishery bill proposed by fish-wheel operators ¹	46,582	40,720	5,862	.....	75
Amendment giving power to cities and towns to regulate race tracks, pool rooms, sale of liquor, etc. ¹	39,442	52,346	.....	12,904	79
Amendment exempting property im- provements from taxation ¹	32,066	60,871	.....	28,805	80
Amendment providing for the recall, <i>i. e.</i> , the removal of a public officer by vote of the people and the elec- tion of his successor ¹	58,381	31,002	27,379	.....	77
Bill instructing legislators to vote for people's choice for United States sena- tors ¹	69,668	21,162	48,506	.....	78
Amendment providing for proportional representation ¹	48,868	34,128	14,740	.....	71
Bill limiting expenditure of money in political campaigns ¹	54,042	31,301	22,741	.....	73
Fishery bill proposed by gill-net op- erators ¹	56,130	30,280	25,850	.....	74
Amendment requiring indictment to be by grand jury, etc. ¹	52,214	28,487	23,727	.....	69
Bill to create Hood River county ¹	43,948	26,778	17,170	.....	61
ELECTION 1910					
<i>Total Vote 120,248</i>					
Woman suffrage amendment ¹	35,270	59,065	.....	23,795	78
Act authorizing purchase of site, con- struction and maintenance of branch insane asylum ³	50,135	41,504	8,630	.....	76
Act calling convention to revise state constitution ³	23,143	59,974	.....	36,831	69
Amendment providing separate election districts for members of the general assembly ³	24,000	54,252	.....	30,252	65
Amendment permitting classification of property for purposes of taxation ³	37,619	40,172	.....	2,553	64

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Amendment authorizing establishment of railroad districts and purchase and construction of railroads ³	32,844	46,070	.....	13,226	65
Taxation amendment authorizing uniform rule of taxation "except on property not specifically taxed," etc. ³	31,629	41,692	.....	10,063	61
Act increasing judge's salary in eighth judicial district ³	13,161	71,503	.....	58,342	70
Bill to create Nesmith county ¹	22,866	60,591	.....	37,725	69
Bill to maintain state normal school at Monmouth ¹	50,191	40,041	10,147	.....	75
Bill to create Otis county ¹	17,426	62,016	.....	44,590	66
Bill providing for annexation of portion of Clackamas county to Multnomah county ¹	16,250	69,002	.....	52,752	71
Bill to create Williams county ¹	14,508	64,090	.....	49,582	65
Amendment providing for county regulation of county taxation and abolishing poll tax ¹	44,171	42,127	2,044	.....	72
Amendment providing for city local option ¹	53,321	50,779	2,542	.....	86
Bill to fix liability of employers ¹	56,258	33,943	22,315	.....	75
Bill to create Orchard county ¹	15,664	62,712	.....	47,048	65
Bill to create Clark county ¹	15,613	61,704	.....	46,091	64
Bill providing for permanent support, by taxation, of Eastern Oregon State Normal School ¹	40,898	46,201	.....	5,303	72
Bill providing for annexation of portion of Washington county to Multnomah county ¹	14,047	68,221	.....	54,174	68
Bill providing for permanent support, by taxation, of the Southern Oregon State Normal School ¹	38,473	48,655	.....	10,182	72
Amendment prohibiting manufacture and sale of intoxicating liquors ¹	43,540	61,221	.....	17,681	87
Bill to make prohibition amendment effective ¹	42,651	63,564	.....	20,913	87
Bill creating board of commissioners to examine and report on employers' indemnity for injuries ¹	32,224	51,719	.....	19,495	69
Bill prohibiting the taking of fish from Rogue river except by hook and line ¹	49,712	33,397	16,315	.....	69
Bill to create Deschutes county ¹	17,592	60,486	.....	42,894	65
Bill to provide for creation of new towns, counties and municipal districts by popular vote within territory affected ¹	37,129	42,327	.....	5,198	66
Amendment permitting counties to incur indebtedness beyond \$5,000 to build roads ¹	51,275	32,906	18,369	.....	70

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Bill extending primary law so as to allow voters to express their choice for candidate for President and Vice-President, presidential electors and delegates to presidential conventions ¹ .	43,353	41,624	1,729	.....	71
Bill to create board of inspectors of state government and providing for bi-monthly reports ¹	29,955	52,538	.....	22,583	68
Amendment extending initiative, referendum and recall powers of the people, etc. ¹	37,031	44,366	.....	7,335	67
Amendment providing for verdict of three-fourths of jury in civil cases and separate summons for grand and trial jurors; authorizing certain changes in judicial system and procedure of supreme court; fixing terms of supreme court and official tenure of all courts ¹	44,538	39,399	5,139	.....	69

¹ Submitted under the initiative.² Submitted under the referendum upon legislative act.³ Submitted to the people by the legislature.

A further fact is worthy of consideration in this connection. It is comparatively easy to get the required percentage of signatures to petitions in Oregon. We are apt to think of this as a sparsely settled agricultural state. It is so in part, but it has a comparatively large urban population, and this is centered in one large city. Thirty per cent of the population of the state is in Portland. In the State of Ohio only twenty-nine per cent of the total population is found in the cities of Cleveland, Cincinnati, Columbus, Toledo and Dayton. If, therefore, cities of over 100,000 inhabitants are considered, Oregon has a comparatively greater urban population than Ohio or a number of other more populous states. This makes it easy to get the required percentage of signatures to petitions in the one large city, Portland.

It is natural, perhaps, that the people of Oregon should be divided in opinion, even after their somewhat extended experience with the initiative and referendum. The views of the friends of the

system are fairly set forth in the following statement from an address by United States Senator Jonathan Bourne:

When the initiative and referendum was under consideration it was freely predicted by enemies of popular government that the power would be abused and that capitalists would not invest their money in a state where property would be subject to attacks of popular passion and temporary whims. Experience has exploded this argument. There has been no hasty or ill-advised legislation. The people act calmly and deliberately and with that spirit of fairness which always characterizes a body of men who earn their living and acquire their property by legitimate means. Corporations have not been held up and blackmailed by the people, as they often have been by legislators. "Pinch bills" are unknown. The people of Oregon were never before more prosperous and contented than they are to-day, and never before did the state offer such an inviting field for investment for capital. Not only are two transcontinental railroads building across the state, but several interurban electric lines are under construction, and rights of way for others are in demand.

Quite at variance with this estimate is the view of Hon. Frederick V. Holman, regent of the Oregon State University. In a recent address in Chicago he said among other things:

It is a political axiom that the majority should rule, but without prejudice to the rights of the minority. In Oregon under the initiative the minority rules in many instances and sometimes to the prejudice of the majority. . . . Briefly to summarize, then, we find that the so-called "reserve" power is greatly abused; that measures in overwhelming numbers and many of them loosely drawn are being put upon the ballot; that the percentage of those who do not participate in direct legislation is increasing; that lack of intelligent grasp of many measures is clearly indicated; that legislation is being enacted by minorities to the prejudice of the best interest of the majority; and that the constitution itself is being freely changed with reckless disregard of its purpose and character.

The impartial observer must concede, however, that the people of Oregon are not disposed to surrender the power reserved to them in the initiative and referendum. A comparatively fair index to the popularity of the system is found in the vote at the election of 1910 on the "act calling a convention to revise the state constitution." It was generally understood that the purpose of this act was to revise the initiative and referendum out of the constitution. The vote stood: for the act, 23,143; against the act, 54,525.

Nevada

In 1904 a referendum amendment to the constitution of Nevada, submitted to the electors of that state by the legislature, was approved

by a large majority in a comparatively light vote. Ten per cent of the electors are empowered to invoke the referendum against any law or resolution passed by the legislature. A majority of those voting thereon can approve or veto a measure. Thus far, the people have invoked the referendum on only one measure. In January, 1908, after the labor trouble at Goldfields, a law creating a state constabulary of 250 men was passed. Against this the organized labor of the state invoked the referendum. At the November election the law was upheld by a vote of 9,954 to 9,078. A constitutional amendment providing for the initiative has been submitted to the people and will be voted on at the coming November election.

Montana

The electors of Montana in 1906 ratified an amendment to their constitution providing for direct legislation. Eight per cent of the voters at the last preceding gubernatorial election are required on initiative, and five per cent on referendum petitions. The usual "emergency laws" are excepted from the referendum, while "laws relating to appropriations for money," laws for the submission of constitutional amendments and "local and special laws" may not be invoked by the initiative or submitted to the electors by referendum petition. The percentages of signatures to either the initiative or referendum petitions must come from at least two-fifths of the whole number of counties of the state. The law against which the referendum is invoked continues in force until voted upon, unless the petition against it is signed by fifteen per cent of the electors. In the latter case the operation of the law is suspended as soon as the petition is filed. If a majority of the electors voting on any measure vote against it, the measure is void. As usual in other states that have adopted constitutional provisions for direct legislation, the governor may not veto a measure submitted to the people. The style of all laws originated by the initiative shall be, "Be it enacted by the people of Montana." To this date the electors of the state have not used the "reserved powers" in this section of their constitution.

Oklahoma

When Oklahoma adopted her constitution preparatory to admission into the Union, that document was widely criticised in cer-

tain quarters as "radicalism run wild." Indeed, if well authenticated reports are true, men in high places, inspired with patriotic fervor, sought to prevent the approval of the constitution by the people, lest its irrational and "socialistic" spirit might sweep with consuming fury beyond the borders of the new state to other inflammable territory. The many worded constitution has proven more formidable in length than in the fundamental character of its ponderous articles and numerous sections. The student will be a little surprised to find that the article devoted to the initiative and referendum is explicit, comparatively brief, carefully written and conservative in word and spirit. The percentages prescribed for signatures are fifteen to initiate a constitutional amendment, eight to initiate any "legislative measure," and five to order the referendum on any act (emergency measures excepted) passed by the legislature. The people are required to vote at the next general election on measures submitted to them, unless a special election is ordered by the legislature or the governor. "Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state and addressed to the governor of the state, who shall submit the same to the people." The referendum "may be demanded against one or more items, sections, or parts of any act of the legislature," but this shall not delay the remainder of the act from going into effect. The initiative and referendum is extended to all counties and districts of the state. A measure rejected by the people can not be brought before them again by initiative petition for three years, unless said petition is signed by twenty-five per cent of the legal voters.

The following provision of this article is important:

"Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast at such election. Any measure referred to the people by referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise."

These requirements, it will be seen, make it comparatively much more difficult to enact a law by initiative process than to veto it through the referendum.

Following are the results of the operation of the initiative and referendum in Oklahoma:

INITIATIVE AND REFERENDUM VOTES IN OKLAHOMA

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
1908					
Initiative bill, authorizing school lands of the state to be sold to homesteaders	96,745	110,840	.....	14,095	82
Legislative proposal to establish a "New Jerusalem," or model city, for seat of state government	117,441	75,792	41,649	.....	76
(Total vote at election, 252,022.)					
1910					
SPECIAL ELECTION, JUNE 11 ⁴					
Initiative amendment, providing for merger of railroad companies	53,784	108,205	.....	54,421	100
Initiative bill, relative to location of state capital	96,515	64,501	32,014	.....	99
(Total vote, 161,989.)					
1910					
SPECIAL ELECTION, AUGUST 2					
Initiative amendment, containing "grandfather clause" for disfranchising negroes	135,443	106,222	29,221	.....	100
(Total vote, 241,655.)					
1910					
REGULAR ELECTION					
Initiative amendment, providing for woman's suffrage	88,808	117,736	.....	28,988	84
Initiative amendment, providing for local option on liquor question	105,041	126,118	.....	21,077	94
Legislative proposal to establish a "New Jerusalem," or model city, for seat of state government	84,336	118,889	.....	34,563	82
Referendum on general election law	80,146	106,459	.....	26,313	76
(Total vote for governor, 245,452.)					

Maine

Maine was the first state on the Atlantic sea-board to provide in its constitution for the initiative and referendum. Laws may be proposed by initiative petitions with signatures of 12,000 electors. Constitutional amendments can not be initiated by petition. If a law proposed by initiative is not enacted by the legislature it must

⁴Supreme court declared this election unconstitutional.

be referred to the people, either alone or with a competing measure of similar character framed by the legislature. Laws, except emergency measures, shall not take effect until ninety days after the adjournment of the legislature. If before the expiration of this time petitions signed by 10,000 electors are filed with the proper officers against any law it must be submitted to popular vote for adoption or rejection. The legislature is also authorized to enact measures, subject to ratification by referendum vote of the people. A majority of those voting for and against any measure adopts or rejects it. The initiative and referendum powers are extended to the municipalities of the state.

In 1909 the people of Maine for the first time voted for measures under this new provision of their constitution with the following results:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Referendum on act fixing standard of alcohol in intoxicating liquors.....	31,093	40,475	.....	9,382	50
Referendum on act to divide the town of York and establish the town of Gorges.....	19,692	34,722	.....	15,030	39
Referendum on act authorizing reconstruction of Portland Harbor bridge..	21,251	29,851	.....	8,700	36
(Total vote for governor, 141,031.)					

Missouri

In 1903 the legislature of Missouri voted to submit to the people an amendment to their constitution providing for direct legislation. The required percentages of signatures to petitions were too high to suit the friends of the movement and they had other objections to the amendment. It was defeated at the election in 1904. In 1907 the legislature again submitted an initiative and referendum amendment which was approved by a substantial majority of the electors in November of the following year. This amendment provides for the referendum on petitions signed by five per cent, and for the initiative on petitions signed by eight per cent of the electors

of the state. The latter applies to constitutional amendments as well as laws enacted by the legislature. The required percentage of signatures must come from at least two-thirds of the congressional districts of the state.

Supplemental legislation was promptly enacted for carrying this constitutional provision into effect. Two amendments to the constitution were submitted on initiative petitions in 1910 with the following results:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
State-wide prohibition of the liquor traffic.....	207,281	425,406	.....	218,125	94
State tax for support of University of Missouri.....	181,659	344,274	.....	162,615	79
(Total vote, 671,763.)					

Through the republican organization of the state, petitions were circulated to initiate a constitutional amendment providing for a change in the senatorial districts of the state. The secretary of state refused to accept these petitions on the ground that it was unconstitutional to amend the constitution in this regard. In this action he was sustained by the supreme court of the state.

In a recent letter Herbert S. Hadley, governor of Missouri, writes:

It is probable that quite a number of amendments to the constitution and legislative measures of public importance will be submitted to a vote of the people at the coming election by initiative petition. Among these will probably be a measure dividing the state into congressional districts; one providing for home rule for the people of the large cities in police and excise affairs; an amendment to the constitution authorizing a workmen's compensation law; one authorizing a public service corporation commission, and one prohibiting contract labor in the state penitentiary.

I believe if the question of retaining or rejecting this proposition (the initiative and referendum) were submitted to a vote of the people, that they would vote to retain this provision of the constitution by a much larger majority than that by which it was adopted in 1908.

Michigan

The constitution of Michigan, adopted in 1908, gives the legislature power to refer any act, except appropriation bills, to the people. Acts so referred do not become laws unless approved by a majority of the electors voting thereon. The people are also given the power to initiate constitutional amendments, the signatures of twenty-five per cent of those voting for secretary of state at the last preceding election being required to submit such amendment to the legislature, which may, in joint session of both houses, reject it or refer it to the people in original or modified form.

Arkansas

The initiative and referendum constitutional amendment, adopted by the people of Arkansas in 1910, in all of its essential features, including percentages of voters required to sign petitions, follows the corresponding provision in the constitution of Oregon.

Colorado

The State of Colorado followed closely in the footsteps of Arkansas in adopting the Oregon plan of direct legislation. The legislature of the state met in special session September 10, 1910, and submitted to the people an amendment which they adopted at the following November election.

Arizona

The constitutional convention of Arizona in 1910, true to western predilection, framed a constitution so emphatically progressive that it precipitated extended discussion in both houses of congress when the question of admitting that state into the Union was under consideration. The presidential veto eliminated from that constitution the recall provision, but left intact the reservation of initiative and referendum powers. Ten per cent of the voters may propose laws and fifteen per cent constitutional amendments. Five per cent may order the submission of any measure (except emergency laws) passed by the legislature. Initiative powers are extended to "cities, towns and counties."

New Mexico

New Mexico, seeking admission into the Union with Arizona, adopted a constitution in 1910 that was considered only "conserva-

tively progressive." It provided for the referendum but not for the initiative. The laws excepted from this provision are those "providing for the preservation of the public peace, health and safety; for the paying of the public debt and interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of public schools or state institutions, and local or special laws." Referendum petitions must be signed by ten per cent of the voters of the state, and this ratio must be contributed by at least three-fourths of all the counties. A law against which referendum petitions are filed continues operative until it is vetoed at the election, unless fifteen per cent of the electors have signed the petitions, in which case the operation of the law is suspended until the people vote upon it. A law submitted to the people is rendered void if a majority of those voting on it vote against it, but the total vote cast thereon must be at least forty per cent of the entire vote cast at the election.

California

The latest state to incorporate an initiative and referendum amendment in its constitution is California, and this amendment exceeds in length any of similar import and purpose previously ratified in the United States. In the first section the people "reserve to themselves the power to propose laws and amendments to the constitution, and to adopt the same at the polls, independent of the legislature, and also reserve the power, at their own option to so adopt or reject any act, or section or part of any act passed by the legislature."

This amendment provides:

(1) For the direct initiative⁵ on laws and constitutional amendments through petitions signed by eight per cent of the electors voting at the last previous gubernatorial election.

⁵ In a general way the initiative, two of its phases, and the referendum may be defined as follows:

1. The initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote.
2. The direct initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote, without reference to the general assembly.
3. The indirect initiative is the power reserved to the people to originate laws or constitutional amendments and enact them by popular vote after they have been referred for consideration to the general assembly.
4. The referendum is the power reserved by the people to veto or sustain by popular vote a law passed by the general assembly.

(2) For the indirect initiative on proposed laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(3) For the referendum on laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(4) The reservation of initiative and referendum powers to the counties, cities and towns of the state.

When a proposed law is submitted through the indirect initiative to the legislature, that body may enact it without change. If this is not done the proposed law must be submitted to the electors, but the legislature may submit at the same election a competing measure of similar character. Direct initiative measures must be submitted at least ninety days before the election at which they are voted upon. The usual emergency measures are excepted from the operation of the referendum. Many details are given in regard to signatures to petitions, submission to the electors of the state, and the conduct of elections.

Proposed Amendments

In the summary on a preceding page it will be noted that initiative and referendum constitutional provisions are to be submitted this year in an unusually large number of states. No attempt will be made to analyze these provisions. They are all modeled after those already adopted and contain few distinctive features. The proposed amendment to the constitution of Washington contains the following regulations for voting on competing measures:

"The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the vote on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then

the measure receiving a majority of the votes on the second issue shall be law."

Much has been said of the amendment proposed to the constitution of Wisconsin. Approving reference was made to it by Theodore Roosevelt in his speech before the constitutional convention of Ohio. It provides for the initiative on any bill previously introduced in the legislature, either in its original form or as amended at any stage of its progress before that body. The initiative petition must be signed by at least eight per cent of the "qualified electors calculated upon the whole number of votes cast for governor at the last preceding election,"

The proposed amendment to the constitution of Ohio, adopted in convention and to be submitted to the people September 3d of this year, provides for a unique indirect initiative. The proponents of this section have summarized its provisions as follows:

"If at any time not less than ten days prior to the commencement of any session of the general assembly three per centum of the electors shall sign a petition proposing a bill and shall file the same with the secretary of state, it shall be transmitted by him to the general assembly. If the general assembly passes the bill as petitioned for, it shall become a law subject always to the referendum as hereinafter defined. If the general assembly fails to pass the law petitioned for, or passes it in an amended form, a petition containing the signatures of three per centum of the electors in addition to the original three per centum may require the submission to the voters for approval or rejection of the law originally petitioned for, or as modified by any of the amendments proposed by the general assembly. If a majority of those voting on the proposed measure vote in favor of it then it shall become a law and the law passed by the legislature, if any, pursuant to the petition presented to the general assembly shall become void."

To this explanation might be added the fact that the legislature is given ample opportunity to amend, as it desires, the proposed law and pass it in modified form. If this is satisfactory to the friends of the measure, they may simply permit it to go into effect without further action. In such a case the necessity of submitting competing measures is avoided. Every law proposed by initiative petition will receive all the benefit of legislative scrutiny and modifications. For this consideration the legislature is given the ample time of four months.

Local Initiative and Referendum by General State Laws

Oberholtzer in his "The Referendum, Initiative and Recall in America," gives the following summary for those states that have adopted the initiative and the referendum in local matters by general laws:

	Initiative, Per cent	Referendum, Per cent
South Dakota	5	5
Nebraska	20	20
Oregon	15	10
Montana	8	5
Oklahoma:		
In counties and districts	16	10
In cities	25	25
Maine	Facultative	
Arkansas		
Colorado	15	10
Wisconsin:		
General election	15	20
Special election	25	20
Ohio	30	15
California (counties):		
General election	10	20
Special election	20	20
California (cities):		
Regular election	15	25
Special election	30	25

While this contribution calls for neither a horoscope nor a prophecy, a few observations based on recent experience and present tendencies may not be wholly out of place:

(1) The initiative and referendum in some form will probably in time be introduced into almost every state constitution in the United States.

(2) With a large and rapidly increasing population this country will never substitute direct legislation for the representative system. Legislatures will continue to enact practically all state statutes. In case of flagrant failure or betrayal of the people in the enactment of laws subversive of their welfare, the people will have a remedy. The powers reserved in the initiative and referendum, it may be truly said, are designed to make representative government more thor-

oughly representative. Such has been the purpose of the great majority of those supporting the movement, and it is safe to say that such has been the effect of the inauguration of direct legislation in the states where it has been introduced, and to an appreciable extent in the states where it has not yet received constitutional sanction. The awakening of the people on the subject has made representatives more responsive to popular demands. With the legislature quick to respond to the will of the people there will soon be rare occasions in any state for the use of the initiative and referendum.

(3) It is probable that the reservation of these powers will have a permanently wholesome influence on the agents of "special privilege," variously denominated in reformatory nomenclature as "bosses," "lobbyists," "minions of predatory wealth," etc. They will not go to the expense of securing by their peculiar methods legislation that may be vetoed by the people. These "bosses" and "minions" will not, however, be removed from the arena of political activities. They will next go to the sources of power, the people themselves, and make the effort to manipulate them as they have already done, in some instances, through the direct primaries.

(4) "In the long run the people may be trusted to do the right thing in matters pertaining to their own government," we are told. While this is true, a proposed law is not necessarily perfect in form or beneficent in operation simply because it was drawn by one of "the plain, honest, common people." Those who formulate a law to be placed at the head of initiative and referendum petitions ought to welcome, as they doubtless will, all the aids sought by the conscientious member of the general assembly. This expert service should be offered by the state and should be entirely independent of partisan influences.

(5) The initiative and referendum places larger powers in the hands of the people. The success of this supplemental function of government implies, encourages, and demands an intelligent, independent, incorruptible and patriotic electorate.

(6) While the verdict on the initiative and referendum seems destined to continue favorable, the ultimate conclusion may take the direction of the testimony of a governor of a state in the middle West, where the system has been given its initial test. "On the whole," he said, "I think it is a good thing, but I do not believe that it will prove the panacea that its friends predict or the source of danger to the 'special interests' that they now anticipate."

THE INITIATIVE, REFERENDUM AND RECALL IN SWITZERLAND

BY WILLIAM E. RAPPARD,
Of Geneva, Switzerland,
Instructor in Economics at Harvard University.

I. WHY SWISS DEMOCRACY SHOULD INTEREST AMERICANS

There are two compelling reasons which make the Swiss experiment in direct democracy well worth considering in the United States.

1. *The United States and Switzerland: A Parallel*

In the first place, political analogies although often deceptive, are always interesting and may sometimes be helpful. The closer they are, the less deceptive and the more suggestive they must prove to be.

Now the contrasts are no doubt many and striking between the young, colossal, and ever-expanding republic, founded on the shores of a new continent at the close of the eighteenth century, and the ancient and minute Helvetic commonwealth, situated in the heart of Western Europe, whose legendary origins lie hidden in the darkness of the Middle Ages. But between the two countries of to-day, there are relations and resemblances also, which, though they may escape the glance of the superficial observer, should not be overlooked by the careful student of comparative politics.

Both are federal republics in which the so-called principle of "double sovereignty," local and national, has given rise to the same legal problems and to the same political difficulties. The Swiss constitution of 1848, of which the present fundamental law of 1874 is the natural outgrowth, was a conscious imitation of the American constitution of 1789.¹ Both countries are democracies. This is

¹ This is denied by Rüttimann in his work entitled *Das nordamerikanische Bundesstaatsrecht verglichen mit den politischen Einrichtungen der Schweiz*, 3 vols., Zurich, 1867-1876, vol. I, p. 25. But the constitutional debates, as well as the whole Swiss political literature of the first half of the nineteenth century, conclusively show that he is mistaken. See for instance the characteristic quotations in Th. Curti's *Die schweizerischen Volksrechte 1848 bis 1900*, Bern 1900, pp. 1-12; Hilty, "Das Referendum im schweizerischen Staatsrecht," *Archiv für öffentliches Recht*, 1887, p. 207; W. D. McCrackan, "The Swiss and American Constitutions," *Arena*, vol. IV, July, 1891, p. 173; A. V. Dicey, "The United States and the Swiss Confederation," *The Nation*, October, 1885, vol. XLI, p. 297. Cf. also the introduction to my article on the "Initiative and the Referendum in Switzerland," in the August, 1912, number of the *American Political Science Review*.

indisputably true of Switzerland. It is still sometimes questioned of the United States. Without entering upon a discussion on this point, we would ask those who are inclined to deny it, what term could more adequately define the political *régime* of a nation, whose citizens are so unanimously convinced that they are living under a government of the people, for the people, and by the people? That formula of democracy so perfectly expresses the prevailing sentiment, that all positive institutions which conflict with it, have become anachronistic and are therefore doomed. In the actual workings of party government there are certainly many contrasts between the two republics, but that the political machine is not an American monopoly, will be clearly recognized the day some acute observer renders Switzerland the great public service for which the United States is so grateful to Mr. James Bryce.

Economically, it is true, there are no apparent resemblances between ocean-bounded, wheat-growing, and mining America, and pastoral Switzerland, with its poverty in mineral wealth and its lack of seaports. But when Mr. Bradford, discussing the possible application of Swiss methods of popular government to America, warns his readers against fallacious analogies on the ground that Switzerland "has no very large manufactures or large cities and no great extremes of wealth and poverty," he is certainly mistaken.² The cotton-spinning and weaving trades, the silk, embroidery, watchmaking and chemical industries of Zurich, Basle, St. Gall, Neuchatel and Geneva are, in proportion to the size of the communities in which they prosper, quite comparable to the largest manufactures in the United States. They are organized on a highly capitalistic basis and have therefore given rise to an industrial proletariat on the one hand and to great fortunes on the other. On the whole, no doubt, wealth is more evenly distributed in Switzerland than in Great Britain or Germany, but cannot the same be claimed for the United States? New York, it is true, is more than twenty-five times as large as Zurich, the largest city in Switzerland, but there is relatively a more numerous urban population in Switzerland than in the United States. The number of cities whose population exceeds 65,000 is sixty-five in the United States, and five in Switzerland, a proportion of 13 to 1. But the total population of the United States is to that of Switzerland about as 25 is to 1. It is important to notice

² G. Bradford, *The Lesson of Popular Government*, 2 vols., New York, 1899, vol. II, p. 231.

that the distribution of population according to occupations is not essentially different in the two countries. In 1905, of the 1,818,217 Swiss, who could be classed as immediate producers, 43 per cent were engaged in agriculture, 40 per cent in manufacturing and mechanical pursuits, and 17 per cent in trade and transportation. The corresponding figures for the United States, according to the census of 1900, were 41 per cent, 39 per cent, and 20 per cent.³

Socially again the parallelism is striking. In both countries the middle-class agricultural element, though numerically weaker than all the other classes combined, is still represented by a strong and prosperous body of land-owning farmers, whose influence is always potent and often decisive in national affairs. In both countries Protestantism is the prevailing creed, but in both there is an important Catholic minority. In point of general education and public enlightenment Switzerland occupies in continental Europe a situation similar to that of the United States in America.⁴ Thanks to the constantly growing influx of foreigners of German, French,

³ Absolute accuracy cannot, of course, be claimed for these figures. They are based on official Swiss and American data, combined in such a way as to make a comparison possible. Miners and quarrymen, for instance, who, in Swiss statistics, are classified with the farmers, as being likewise engaged in *Gewinnung der Naturerzeugnisse*, have been transferred to the second category. On the other hand, hotel-keepers and the like, who, according to the American census, are engaged in domestic and personal service, have been counted with tradespeople. Cf. *Statistisches Jahrbuch der Schweiz*, Jahrgang, 1907. *Ergebnisse der eidg. Betriebszählung von 1905*, and *Statistical Abstract of the United States for 1911*.

⁴ Obviously this statement cannot be scientifically substantiated. Perhaps the most significant tangible symptom of wealth and education, the two essential conditions of advanced civilization, is the comparative amount of written matter annually forwarded by mail. The following table may therefore be pertinently cited in this connection:

Countries.	Population in 1908.	Total number of letters and cards forwarded in 1908.	Number of letters and cards forwarded per head of population.
United States.....	91,030,000	7,947,000,000	87.3
Switzerland.....	3,585,000	252,000,000	70.1
Germany.....	64,926,000	4,041,000,000	63.1
Austria.....	30,463,000	1,095,000,000	36.5
France.....	39,602,000	1,320,000,000	33.9
Italy.....	34,687,000	376,000,000	11.0

—See *United States Statistical Abstract*, 1910.

Although such general data must be interpreted with extreme caution, statistics seem to show that, with regard to the amount of money spent per scholar for educational purposes, no government in Europe more nearly approaches the United States than Switzerland. See A. D. Wells, *The New Dictionary of Statistics*, London, 1911, p. 209.

and Italian origin, Switzerland is confronted with an immigration problem which, in many of its aspects, is even more perplexing than that which at present faces American statesmen. Switzerland, it is true, has never been seriously troubled with a race question, but that in the Helvetic, as well as in the American republic, national unity has no ethnological basis is clearly shown by the varieties of languages spoken by the Swiss people.⁵ It would be a most interesting task to show that Switzerland owes no less to the religious intolerance of other nations than does the United States, but this would lead us too far away from our main subject. We may say, however, in concluding this comparative political, economic and social sketch, that the historical influence of the Huguenot element in Switzerland, can well be compared to that exerted by the Puritans and the other religious refugees on American prosperity and on American institutions.

"But," I hear an impatient reader exclaim in patriotic protest, "why all these laboriously established analogies? What can the hundred millions of United States citizens learn from the example of a nation smaller, in population, than New York City?" My answer is simple. The modern devices of direct democracy which we are about to discuss, obtain in the federal government in Switzerland, whereas, to begin with at least, it is not proposed to apply them to the federal government in America. Now, small as she may appear, Switzerland is larger than all American cities but one, and larger also than many American States.⁶

⁵ On December 1, 1910, Switzerland had a population of 3,741,971. Its distribution according to creed, tongue and nationality is shown in the following table:

CREED.		Percentage
Protestants.....	2,108,590	57.1
Catholics.....	1,590,792	42.9
NATIONALITY.		
Swiss.....	3,176,675	85
Foreign.....	565,296	15
PREVAILING LANGUAGES.		
German.....	2,599,154	70.3
French.....	796,244	21.6
Italian.....	301,325	8.1

—*Statistisches Jahrbuch der Schweiz*, Jahrgang, 1910.

⁶ Switzerland, with a population of 3,741,971, an area of 15,976 square miles, and consequently an average density of 234.2 inhabitants per square mile, were it an American state, would rank forty-first in point of area, between West Virginia (24,170 square miles) and Maryland (12,327), sixth in point of population, between Texas (3,896,542) and Massachusetts (3,366,412), and fourth in point of density of population, between New Jersey (337.7 inhabitants per square mile) and Connecticut (231.3 inhabitants per square mile).

Objections based on considerations of relative size and importance cannot therefore be justly urged against us. Besides, even if these objections were theoretically justified, they would be practically irrelevant, as the actual influence of Swiss direct democracy on American institutions cannot be denied. It is futile to argue that the United States can learn nothing from the Swiss example, when it may be proved that in point of fact they have admittedly learned a great deal.

2. *The Recent Adoption of Swiss Methods in the United States: A Case of Democratic Contagion*

This leads us to state the second compelling reason why intelligent citizens of this country should be peculiarly interested in our subject. Not only may the Swiss experiment be of assistance to him who would help solve the problems of the immediate American future, but it cannot be overlooked by him who would fully understand the development of the recent American past. This case of democratic contagion, although recognized by several,⁷ has never been clearly diagnosed and fully stated. I may therefore be excused if I dwell upon it here in some detail.

One of the most marked features of the political evolution of the United States in the course of the nineteenth century is an ever-growing popular dissatisfaction with the state legislatures and a consequent constitutional limitation of their powers.

Professor Burgess had clearly established the fact in 1886.⁸ Soon after it was generally recognized among publicists⁹ and in 1898 Mr. Edwin L. Godkin devoted a whole chapter of his "Unforeseen Tendencies of Democracy" to the discussion of "The decline of legislatures."¹⁰

The people had long distrusted their elected representatives, but towards the close of the century, owing to a variety of definite circumstances, they were roused to a sense of violent and impatient protest against their domination.¹¹

⁷ For instance by President Lowell in his recent article in the *Quarterly Review*, vol. CCXIV, April, 1911, p. 525.

⁸ In his article on the "American Commonwealth," *Pol. Sci. Quarterly*, vol. I, pp. 26-30.

⁹ See for instance the *Spectator*, vol. LXXI, p. 904; E. V. Reynolds, *Yale Review*, vol. IV, p. 289.

¹⁰ Boston, 1898, Chapter IV, pp. 96-145.

¹¹ An undoubtedly exaggerated but still a significant expression of this feeling may be found in the campaign book of the People's Party published in 1892 by the Hon. Thomas E. Watson, Member of Congress from Georgia, under the title, *Not a Revolt; It is a Revolution*, Washington, 1892.

In Mr. James Bryce's celebrated work on the American Commonwealth, whose first edition appeared at the close of the year 1888, American institutions were subjected to an analysis more searching in its method and more comprehensive in its scope than had ever been attempted before. The evils of corrupt bossism and of political feudalism which that remarkable work revealed, were all the more startling to American pride, since their foreign critic was so evidently fair and so eminently sympathetic in his general judgments. "It has become somewhat of a common place assertion that our politics have reached the lowest stage to which they may safely go," wrote Mr. W. D. McCrackan in 1893.¹² He added, "The general conviction has gone abroad, amply justified by the whole course of history, that no democracy can hope to withstand the corrupting influences, now at work in our midst, unless certain radical reforms are carried to a successful conclusion."

At about the same time the attention of the English speaking public was almost suddenly called to the Swiss experiment in direct democracy. In 1890 the anonymous author of an article in the *Edinburgh Review* declared that Switzerland was "to Englishmen the best explored and the least known state of modern Europe."¹³ The referendum seemed absolutely strange to the Anglo-American world at large. Such works as Ripley and Dana's *American Cyclopædia* (1875) and Lalor's *Cyclopædia of Political Science* (1882-1884) contained no articles on the subject. According to Murray's *New Historical Dictionary* the term was first used in the English press in 1882 in relation to Swiss affairs. Two articles describing the Swiss referendum were published in *The Spectator* in 1884. They bore the following titles, "The popular veto in Switzerland" and the "Swiss right of censure."¹⁴ In 1890, the author of the above-mentioned article in the *Edinburgh Review*, defining the referendum, declared it to be "a term utterly foreign to English constitutionalism."¹⁵ Writing in 1894, Professor Dicey relates that "the nature and the very name of the referendum were then (1890) unknown to Eng-

¹² *Save the Republic*, No. 3, Present Day Problems, Boston, 1893, p. 1.

¹³ Art. "Democracy in Switzerland," *Edin. Rev.*, vol. CLXXI, Jan., 1890, p. 113. Cf. A. W. Hutton, "Switzerland as a School of Politics," *Living Age*, vol. CLXXXVIII, Jan., 1891, p. 150: "Switzerland is the best known and the least known of all the countries of Europe. Its physical features are familiar to every one; its system of government only to a few." See also E. A. Freeman, "The Referendum," *Universal Rev.*, vol. VII, May-August, 1890, p. 331.

¹⁴ Vol. LVI, p. 1340, and vol. LVII, p. 672.

¹⁵ *Loc. cit.*, p. 135.

lish statesmen."¹⁶ This was not a result of mere insularism, as is shown by a similar statement made by Mr. McCrackan with regard to the United States for the year 1888.¹⁷ Five years later, in England as well as in this country, the term had become familiar to every one and the desirability of the adoption of the institution was widely discussed. In 1894 Professor Dicey comments on "the vast change" which had taken place in this respect in England;¹⁸ and in 1896 Mr. W. E. H. Lecky speaks of the Swiss referendum as of the "great possible constitutional change, very new to English opinion, which has risen with remarkable rapidity into prominence in the last few years."¹⁹ In America, Mr. McCrackan, in 1893, notes the "truly astonishing rapidity with which this question of the referendum has forced itself into public notice,"²⁰ and in 1896 Mr. Eltweed Pomeroy writes that "the word referendum is constantly in the daily papers, so that the reader must be far behind the times who is not familiar with the term."²¹ What had happened in the course of this short period, so momentous for the history of our subject?

A series of articles and books had been published in English on Swiss history and on Swiss institutions. The referendum had been discovered and its possibilities as an effective defense against unpopular legislation had been made clear. Corruption in the United States and the Irish Home Rule policy in Great Britain, which a parliamentary majority seemed inclined to impose on an unwilling people, had, in both countries, indisposed the electorate towards their representatives. Democracy was ill. A new cure was proposed. The eagerness with which the American and English publicists seized upon the imported Swiss remedy reminds one of the feverishly hopeful expectancy with which an invalid welcomes a novel foreign drug.

Before 1889 the English speaking public had had occasion to hear of the referendum only through a few scattered magazine articles and newspaper correspondences. In 1885, it is true, Sir Henry Sum-

¹⁶ *National Rev.*, vol. XXIII, March, 1894, p. 65.

¹⁷ In an article on the "Swiss Referendum" published in the *Cosmopolitan*, vol. XV, July, 1893, p. 333: "Five years ago its very name was unknown in this country."

¹⁸ *Loc. cit.* *National Rev.*

¹⁹ *Democracy and Liberty*, 2 vols., 1st ed., London, 1896, vol. I, p. 277.

²⁰ *Loc. cit.* *Cosmopolitan*.

²¹ *Arena*, vol. XVI, p. 42. See also F. Parsons, *The City for the People*, Philadelphia, 1900, p. 287: "With the single exception of the public ownership of monopolies, no other progressive idea has had anything like so rapid a growth as this." (direct legislation).

ner Maine had given the subject some attention in his "Essays on Popular Government."²² But discussing the referendum, as he did, mainly to show its negative effects and thereby to dissipate the "gross delusions" of that "particular political school" which believed that "Democracy was a progressive form of government," he evidently did not commend it to the radical elements of the community, who could alone be expected to favor its adoption. In 1885 and 1886, Professor Dicey, holding that "the problem of the age is how to form conservative democracies,"²³ and observing the conservative tendencies of the Swiss referendum, urged that this new device be carefully considered in America, and predicted that "for good or bad, it is likely to come into existence in every thoroughly democratic state."²⁴ But both his advice and his prophecy seem to have escaped general notice. In 1888 the question was again ventilated in an interesting article in the *Westminster Review*²⁵ and in several pages of Mr. Bryce's "American Commonwealth;" but it was only in the following year that public discussion was fairly started by the publication of Sir Francis Ottiwell Adams and Mr. C. D. Cunningham's comprehensive book on "The Swiss Confederation."²⁶ It was a work neither original in its conception nor profound in its analysis, but it combined the merits of clearness and general accuracy,²⁷ with the great advantage of timeliness and novelty to the English reader. The volume was favorably reviewed in many periodicals²⁸ and extensively used and quoted by the hundreds of Anglo-American authors who, in the course of the last twenty years, have discussed Swiss institutions in books, pamphlets, magazines, and newspapers.²⁹ At the other pole of the Anglo-Saxon world Professor B. Moses, within the same year, published his treatise on the "Federal government of Switzerland,"³⁰ a useful book but less entertainingly written

²² London, 1885, p. 97.

²³ "Democracy in Switzerland II," *Nation*, vol. XLIII, December, 1886, p. 494.

²⁴ The "United States and the Swiss Confederation," *Nation*, vol. XLI, Oct., 1885, p. 298.

²⁵ Vol. 129, February, pp. 204-213, reprinted in the *Living Age*, vol. LXXVII, March, pp. 643-648.

²⁶ London, 1889.

²⁷ Adams, its principal author, was British minister in Berne at the time.

²⁸ See for instance the *Spectator*, vol. LXII, May, 1889, pp. 650-651; *Athenæum*, vol. II, July, 1889, pp. 59-60; *Edin. Rev.*, vol. CLXXI, Jan., 1890, pp. 113-150.

²⁹ In the preface to the first edition of his *Referendum in America*, Mr. E. P. Oberholtzer declares that "this book started discussion in this country." 2d ed., New York, 1912, p. iii. Some familiarity with the contemporary literature of the subject enables me fully to confirm this statement.

³⁰ Oakland, Cal., 1889.

than the former, and evidently not intended for a wide popular circulation. From 1890 until 1898, when the first American state adopted the initiative and the referendum of the Swiss type, Switzerland, and particularly its experiments in direct democracy, were subjects of ever increasing interest in England and America. The following list of chronologically arranged publications may serve both as an indisputable proof of this interest and as a very incomplete English bibliography of our subject:

1883. Anon., "The popular veto in Switzerland," *Spectator*, vol. LVI, Oct., pp. 1340-1341.
1884. Anon., "The Swiss vote of censure," *Spectator*, vol. LVII, May, pp. 672-673.
1885. H. S. Maine, *Popular Government. Four Essays*. London.
E. de Laveleye, "The recent progress of democracy in Switzerland," *Nineteenth Century Rev.* vol. XVIII, Sept., pp. 493-512. Reprinted in the *Living Age*, vol. CLXVII, Oct., pp. 67-79.
A. V. Dicey, "The United States and the Swiss Confederation," *Nation*, vol. XLI, Oct., pp. 297-298.
1886. A. V. Dicey, "Democracy in Switzerland," *Nation*, vol. XLIII, Nov., pp. 410-412; Dec., pp. 494-496.
1888. J. Bryce, *The American Commonwealth*, London and New York.
Anon., "The Swiss Constitution." *Westminster Rev.*, vol. CXXIX, Feb., pp. 204-213. Reprinted in the *Living Age*, vol. CLXXVI, March, pp. 643-648.
1889. F. O. Adams and C. D. Cunningham, *The Swiss Confederation*, London.
B. Moses, *The Federal Government of Switzerland*, Oakland.
Anon., "The Swiss Confederation," *Spectator*, vol. LXII, May, pp. 650-651.
Anon., "The Weight of Mass Vote," *Spectator*, vol. LXIII, Oct., pp. 425-426.
Anon., "The Swiss Confederation," *Athenæum*, vol. II, July, pp. 59-60.
1890. E. J. James, translator, *The Federal Constitution of Switzerland*, Philadelphia.
Anon., "The Government of Switzerland," *Atlantic Monthly*, vol. LXV, Jan., pp. 128-132.
Anon., "Democracy in Switzerland," *Edin. Rev.*, vol. CLXXI, Jan., pp. 113-145.
A. V. Dicey, "Ought the Referendum to be introduced into England?" *Cont. Rev.*, vol. LVII, April, pp. 489-512. Reprinted in the *Living Age*, vol. CLXXXV, May, pp. 515-528.
S. H. M. Byers, "Switzerland and the Swiss," *Harper's New Monthly Mag.*, vol. LXXXI, Nov., pp. 924-929.
E. A. Freeman, "The Referendum," *Universal Rev.*, vol. VII, May-Aug., pp. 331-349.

1891. J. M. Vincent, *State and Federal Government in Switzerland*, Baltimore.
B. Winchester, *The Swiss Republic*, Philadelphia.
J. W. Sullivan, "The Referendum in Switzerland," *Chautauquan*, vol. XIII, April, pp. 29-34.
W. D. McCrackan, "The Swiss Referendum," *Arena*, vol. IV, March, pp. 458-465.
Ibid., "The Swiss and American Constitutions," *Arena*, vol. IV, July, pp. 172-180.
W. A. B. Coolidge, "The Early History of the Referendum," *English Hist. Rev.*, vol. VI, Oct., pp. 674-685.
A. W. Hutton, "Switzerland as a School of Politics," *Living Age*, vol. CLXXXVIII, Jan., pp. 150-159.
E. P. Oberholtzer, "Law making by popular Vote; or the American Referendum," *Annals of the American Academy of Political and Social Science*, vol. II, Nov., pp. 324-344.
J. M. Vincent, "Switzerland, 1291-1891," *Nation*, vol. LIII, Aug., pp. 119-120.
Anon., "The limits of the Referendum," *Spectator*, vol. LXVII, Oct., p. 556.
1892. J. W. Sullivan, *Direct Legislation by the citizenship through the Initiative and the Referendum*, New York.
W. D. McCrackan, *The Rise of the Swiss Republic*, Boston.
W. Cree, *Direct Legislation by the people*, Chicago.
A. V. Dicey, "The Defense of the Union," *Cont. Rev.*, vol. LXI, March, pp. 314-332.
S. H. M. Byers, "Switzerland's Model Democracy," *Mag. of Am. Hist.*, vol. XXVIII, July, pp. 42-49.
Anon., "The Swiss Confederation," *Spectator*, vol. LXIX, Aug., pp. 262-263.
Anon., "The Referendum in America," *Spectator*, vol. LXXI, Dec., pp. 904-905.
1893. A. Cridge, *Proportional Representation, the Initiative and the Referendum*, San Francisco.
O. King, "Switzerland as a nursery of politics," *Andover Rev.*, vol. XIX, May-June, pp. 269-288.
W. D. McCrackan, "The Initiative in Switzerland," *Arena*, vol. VII, April, pp. 548-554.
Ibid., "How to introduce the Initiative and the Referendum," *Arena*, vol. VII, May, pp. 696-702.
Ibid., "Save the Republic," *Present Day Problems*, No. 3, Boston.
Ibid., "The Swiss Referendum. The Ideal Republican Government," *Cosmopolitan*, vol. XV, July, pp. 329-333.
B. O. Flower, Editorial, *Arena*, vol. VIII, July, p. 272.
C. B. Roylance Kent, "An Appeal to the people," *Macmillan's Mag.*, vol. LXIX, Nov., pp. 15-22.
G. W. Ross, "Referendum and Plebiscite," *Canadian Mag.*, vol. I, Aug., pp. 445-450.

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1894. N. W. Withington, "The Swiss Referendum," *New England Mag.*, vol. IX, Jan., pp. 563-568.
- J. St. Loe Strachey, "An Appeal to the Lords," *National Rev.*, vol. XXII, Feb., pp. 738-742.
- Ibid.*, "The Referendum," *National Rev.*, vol. XXIII, April, pp. 196-200.
- Anon., "Mr. Balfour on the Referendum," *Spectator*, vol. LXXII, Feb., pp. 188-189.
- J. W. Sullivan, "Direct Legislation in Massachusetts," *American Federationist*, vol. I, March, pp. 9, 14.
- Ibid.*, founds the *Direct Legislation Record*, which has since become the *Equity Series* under the management of E. Pomeroy.
- A. B. Hart, "Vox populi in Switzerland," *Nation*, vol. LIX, Sept., pp. 193-194.
- A. L. Lowell, "The Referendum in Switzerland and in America," *Atlantic Monthly*, vol. LXXIII, April, pp. 517-526.
- A. V. Dicey and others, "The Referendum," *National Rev.*, vol. XXIII, March, pp. 65-81.
- W. D. McCrackan, "Swiss solutions of American Problems," *New England Rev.*, vol. XI, Dec., pp. 448-459.
- C. B. Spahr, "Letters on the Referendum," *Outlook*, vol. L, Sept., pp. 423-424.
- Anon., "The Referendum in America," *Spectator*, vol. LXXIII, Oct., pp. 494-495.
1895. C. Borgeaud, *Adoption and Amendment of constitutions in Europe and America*. Translated by C. D. Hazen, New York.
- N. Droz, "The Referendum in Switzerland," *Cont. Rev.*, vol. LXVII, March, pp. 328-344. Reprinted in the *Living Age*, vol. CCV, April, pp. 3-14.
- A. L. Lowell, "The Referendum and the Initiative: Their relation to the interests of labor in Switzerland and America," *International Journal of Ethics*, vol. VI, Oct., pp. 51-63.
- W. D. McCrackan, "The Referendum and the Senate," *Lippincott's Mag.*, vol. LV, June, pp. 855-858.
- E. V. Raynolds, "The Referendum and other forms of direct democracy in Switzerland," *Yale Rev.*, vol. IV, Nov., pp. 289-304. Same article in the *Journal of Social Science*, vol. XXXIII, Nov., pp. 213-226.
- J. M. Gregory, "The Referendum and Initiative in Switzerland," *Public Opinion*, vol. XVIII, April, p. 440.
1896. A. L. Lowell, *Government and Politics in continental Europe*, 2 vols, Boston, vol. II, pp. 238-296.
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- M. Oppenheimer, Statement made in *Coming Nation*, Jan.
- T. McEwan, Statement made in *Coming Nation*, Jan.
- J. W. Sullivan, "How it works," *Coming Nation*, Jan.
- W. D. McCrackan, "A President of no importance," *North American Rev.*, vol. CLXIII, July, pp. 118-121.
- J. Macy, "The Swiss and their politics," *American Journal of Sociology*, vol. II, July, pp. 25-42.
1897. M. Rittinghausen, *Direct legislation by the people*, Translated by A. Harvey, New York.
- F. Dygert, *Direct legislation* (Los Angeles?).
- E. Pomeroy, "The doorway of Reforms," *Arena*, vol. XVII, April, pp. 711-722.
- Ibid.*, "Foresadowings of Direct Legislation," *American Nonconformist*, June.
- L. Wuarin, "Genuine Democracy in Switzerland," *Progressive Rev.*, vol. II, July, pp. 337-345.
- L. Tomn, "The latest phase of direct legislation," *Progressive Rev.*, vol. II, July, pp. 345-358.
- E. F. Barker, "The Initiative and the Referendum," *Arena*, vol. XVIII, Nov., pp. 613-628.
- M. Butler, "The Initiative and the Referendum," *Home Mag.*, October.
- J. St. Loe Strachey, "A Poll of the People," *Cosmopolis*, vol. VI, April, pp. 48-63.
1898. S. Deploige, *The Referendum in Switzerland*. Translated by C. P. Trevelyan, London and New York.
- F. A. Cleveland, *The growth of Democracy in the United States*, Chicago, pp. 177-242.
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- J. C. Reeve, *The Referendum*. A Paper read before the Present Day Club of Dayton, Ohio, Nov. 22, 1898, Dayton.
- R. S. Thompson, *A Pure Democracy*. A pamphlet of the "Question" series, June.
- B. O. Flower, "Brookline; a model town under the Referendum," *Arena*, vol. XIX, April, pp. 505-520.
- J. R. MacDonald, "The Referendum and the Swiss Railroads," *American Monthly Rev. of Rev.*, vol. XVII, April, pp. 443-445.
- B. S. Dean, "The Constitution or a theory—which?" *Green Bag*, vol. X, Nov., pp. 479-484.

The flood of books and articles published in English on Swiss democracy did not recede after 1898. On the contrary it has con-

tinued to swell so that to-day a discussion of some phase of the referendum seems to be as essential a feature of the typical American magazine as does the inevitable advertisement of a world-famed safety razor which invariably adorns its cover. If we do not carry this enumeration down to date, it is simply because our space is limited and because we believe our demonstration on this point to be sufficiently complete without this additional element of proof.³¹

We have shown that before 1889 the Swiss Referendum was practically unknown in America and that in the course of the following decade it was very widely discussed before the American public. On the other hand we know that in 1898 it was first adopted by an American state. The mere sequence of these facts seems to imply a relation of causality. But in order to satisfy the most exacting we must show that the enactment of the American measures took place under the immediate influence of the Swiss example. And this also our evidence clearly enables us to do.

The first political party to demand direct legislation in America was the Socialist Labor Party. It had originally taken over this plank, with many others, from the platform of the German Social Democrats.³² The latter had adopted it at Eisenach in 1869, the very year in which Karl Bürkli, of Zurich, had presented a resolution in its favor at the Congress of the International at Basle.³³ But in the last century the influence of the followers of Karl Marx was negligible in America.

The first large and well organized body that favored the adoption of the initiative and the referendum in this country was the American Federation of Labor,³⁴ which has officially championed these measures ever since 1892.³⁵ The man who did most to bring about this result was Mr. J. W. Sullivan,³⁶ an active member of the typo-

³¹ For the latest and most complete bibliography of the subject see United States Library of Congress. *Select list of references on Initiative, Referendum, and Recall*, compiled by H. H. B. Meyer, Washington, 1911.

³² Pomeroy, *Arena*, vol. XVI, p. 37.

³³ See *Direct Legislation by the People vs. Representative Government*, translated by E. Oswald, London, 1869.

³⁴ Addressing the Annual Convention of the A. F. of L. in New York on Dec. 12, 1895, on the subject of direct legislation, Mr. Eltweed Pomeroy, perhaps the best informed man on the history of the movement, said: "It is . . . an honor to be asked to speak on the cause you were the first to champion in this country." *American Federationist*, vol. II, p. 201.

³⁵ Pomeroy, *Arena*, vol. XVI, p. 34.

³⁶ Cf. C. B. Spahr: "Mr. Sullivan, whose little book has stirred the American trade-unions into action." *Outlook*, vol. L, p. 423. See also the *American Federationist*, vol. II, p. 202: Mr. Pomeroy here refers to Mr. Sullivan as "the father of the direct legislation movement in this country." F. Parsons writes: "The popular movement began in 1892, with the publication of Mr. Sullivan's book." *The City for the People*, Philadelphia, 1900, p. 287.

graphical union, subsequently a national lecturer of the American Federation of Labor, and in 1894 the founder of the *Direct Legislation Record*. Mr. Sullivan had twice visited Switzerland, in 1883 and 1888, to collect data relative to direct legislation. In the spring of 1889 he published a series of letters on the subject in the *New York Times*, followed in 1891³⁷ by an article in the *Chautauquan*, and in 1892 by his book on direct legislation, more than half of which is devoted to a study of Swiss institutions. The success of this small volume, teeming, as it does, with misstatements and exaggerations, but clearly and enthusiastically written, was phenomenal. By the advice of Mr. Samuel Gompers it was widely circulated in Massachusetts in 1894, and there "worked a revolution" among organized workmen.³⁸ By 1896, 18,000 copies of it had already been distributed all over the country.³⁹

Various devices closely resembling the initiative and the referendum had, it is true, long been applied to the management of trade unions.⁴⁰ The Cigar Makers' International Union of America had introduced them about in 1880⁴¹ and in England they seem to have been employed for nearly a century.⁴² But it was only when those familiar with Swiss institutions had urged that similar democratic methods be adopted for the government of Amercian states that the American Federation of Labor began actively to support the idea. We are therefore justified in saying that here the influence of the Swiss example was direct and decisive.

Two other bodies had become interested in the initiative and the referendum chiefly, it would seem, through Mr. Sullivan's agitation.

In 1891 Master Workman Powderly "recommended that the referendum be adopted in political government and shortly after such a plank was inserted in the Knights of Labor preamble."⁴³ Thence the idea seems to have gained various State Farmers' Alli-

³⁷ Not in 1889, as erroneously stated by Mr. Pomeroy, *Arena*, vol. XVI, p. 32.

³⁸ According to Mr. F. K. Foster's "Labor Leader" quoted in *American Federationist*, vol. I, p. 14.

³⁹ Pomeroy, *Arena*, vol. XVI, p. 33.

⁴⁰ "As early as 1891," declares Frank Parsons, "ten of the largest and national and international trade unions (with a membership close to 200,000) were using direct legislation." *Op. cit.*, p. 326.

⁴¹ G. W. Perkins, President of this Union, quoted in *Senate Document No. 340*, 55th Congress, 2d Session, p. 68.

⁴² S. & B. Webb, *Industrial Democracy*, new ed., 1902, pp. 15 *et seq.*

⁴³ E. Pomeroy, *Arena*, vol. XVI, p. 35.

ances.⁴⁴ On the 4th of July, 1892, the National People's Party, "the outgrowth . . . of the Farmers' Alliance and certain labor organizations of the cities,"⁴⁵ adopted a resolution at their first national convention at Omaha commending to "the thoughtful consideration of the people and the reform press the legislative system known as the initiative and the referendum."⁴⁶

In South Dakota this party came into power in 1896. In 1897 A. E. Lee, the Populist candidate, was elected governor of the state.⁴⁷ The same year the legislature passed a constitutional amendment favoring the adoption of the initiative and the referendum of the Swiss pattern, and this amendment, having been submitted to a popular vote, was embodied in the fundamental law of the state in 1898.⁴⁸

As we know that the leading Populists all over the country were very familiar with the Swiss model,⁴⁹ and as Rev. R. W. Haire, the most prominent advocate of direct legislation in South Dakota, writes that in his campaign against the omnipotence of the legislature, the Swiss example, which he heard of in 1889, "gave him the greatest courage to continue the agitation,"⁵⁰ we may safely conclude that here also the influence of Switzerland was direct and decisive.⁵¹

In Oregon, the first state that followed South Dakota's example, the Swiss influence is still more obvious. The story of the introduction of direct legislation there has been so ably and so entertainingly told by Mr. B. J. Hendrick that I need but refer to his article in last year's *McClure's Magazine*.⁵² In Oregon and in South Dakota the same causes—popular discontent with a corrupt legislature,

⁴⁴ The National Farmers' Alliance did not officially join in the movement before 1895. See Pomeroy, *loc. cit.*, p. 36.

⁴⁵ J. A. Woodburn, *Political Parties and Party Problems in the United States*, New York, 1906, p. 110.

⁴⁶ *National Party Platforms*, compiled by J. M. H. Frederick, Akron, 1892, p. 83.

⁴⁷ D. Robinson, *A brief history of South Dakota*, New York, 1905, p. 208.

⁴⁸ "The amendment was carried through the legislature mainly by the Populists. It passed the Senate by a party vote, but in the House received the votes of all the Populists, six Republicans and two Democrats." Parsons, *op. cit.*, p. 282.

⁴⁹ The *Arena*, in which so many articles had been published on the subject between 1890 and 1898, was practically a Populist magazine.

⁵⁰ In a letter dated Aberdeen, S. D., May 6, 1912, written in reply to a query, which my friend and colleague, Dr. A. N. Holcombe, of Harvard University, was kind enough to make at my request.

⁵¹ Oberholtzer, *The Referendum in America*, p. 309, speaks of "The recent amendment to the Constitution of South Dakota which introduces the Swiss Initiative and Referendum." Cf. *ibid.*, p. 385.

⁵² July, Aug., Sept., Oct., 1911, vol. XXXVII.

Mr. Sullivan's book, similar writings, and the populist agitation—produced the same effect—the Swiss initiative and referendum. The adoption of these measures was facilitated by the presence in Clackamas county and particularly in Milwaukee, the city in which the movement originated, of a very large Swiss colony, “whose members,” says Mr. Hendrick, “brought with them many memories of popular law-making in their fatherland.”⁵³ Of the many leaders of the movement none was more active nor more successful than Mr. W. S. U'Ren, a prominent lawyer of Oregon City, who has been called the “legislative blacksmith” of Oregon.⁵⁴ I am indebted to his kindness for the following statement, made in reply to my inquiry regarding the influence of the Swiss example in his state: “We took our initiative and referendum from your country. I had much correspondence with Professor Borgeaud of the University of Geneva and with a friend, now deceased, whose name I cannot recall. He was one of the leaders in Zurich.”⁵⁵ We were also very much helped by letters from Philip Jamin and other Swiss citizens in the Direct Legislation Record. . . . Mr. Sullivan's book on Direct Legislation in Switzerland was a great moving cause in Oregon. We circulated about 1,500 copies between '92 and '95. . . . I believe I do not overstate the fact when I say Oregon is wholly indebted to Switzerland for these efficient tools of democracy.”⁵⁶

If any doubts should subsist concerning the importance of the Swiss example for America the following testimony, for which I am indebted to three of the foremost advocates of the principle of direct legislation, must surely dispel them. Dr. J. R. Haynes, of Los Angeles, familiarly known as “Recall John,” writes: “In my opinion the example of Switzerland has been of great influence in the development of American institutions, especially in recent years. . . . The experience of Switzerland has exerted a strong influence through political students in disarming the prejudice of the people generally towards the acceptance of the initiative and referendum.”⁵⁷ Mr. B. J. Hendrick, the author of the above mentioned articles declares: “It is fair to say that there would be no modern revival of the initiative and referendum had it not been for the Swiss

⁵³ *McClure's Magazine*, vol. XXXVII, July, 1911, p. 241.

⁵⁴ Oberholtzer, *op. cit.*, p. 406.

⁵⁵ Probably the above mentioned Karl Bürkli.

⁵⁶ Letter dated Oregon City, April 19, 1912.

⁵⁷ Letter dated Los Angeles, April 13, 1912.

example."⁵⁸ Mr. G. H. Shibley, Director of the American Bureau of Political Research and National President of the People's Rule League of America, says: "The influence of the Swiss example on the development of democracy in the United States in this era is beyond words to express."⁵⁹

There is certainly no desire on my part to over-estimate the significance of Switzerland's recent contribution to American political institutions. "The referendum," as the author of the most comprehensive work on this subject has said, "is clearly of ancient American lineage."⁶⁰ Under another name and in a somewhat different form, it steadily developed in the course of the nineteenth century before the Swiss example was known in this country,⁶¹ and it would no doubt have further developed had the Swiss example remained unknown. However, as the same author says elsewhere, its extension to all statute law and its combination with the initiative after the Swiss pattern has brought about "one of the most important changes that has ever been made in the American form of government."⁶²

If this change proves to be a progress, Switzerland will but have partially requited the debt it owes the United States for the example of its federal constitution.⁶³

It has been hinted that the recall, of which we have said nothing so far, was also of Swiss origin.⁶⁴ As that institution was first introduced in its modern form in America in the Los Angeles charter of 1903;⁶⁵ and as this was accomplished almost exclusively through the personal efforts of Dr. J. R. Haynes,⁶⁶ and as neither that gentleman nor any of his associates was familiar with the Swiss

⁵⁸ Letter dated New York, April 1, 1912.

⁵⁹ Letter dated Washington, April 4, 1912. I cannot speak too highly of the courtesy shown me by these gentlemen, who favored my inquiries with very prompt and enlightening replies. I hereby renew the expression of my sincere gratitude for their valuable assistance in elucidating a point of contemporary history, which is of real interest to all present and future students of comparative politics.

⁶⁰ Oberholtzer, *op. cit.*, p. 268.

⁶¹ F. A. Cleveland, *op. cit.*, pp. 177-190, 210-242; A. B. Hart, *National Ideals Historically Traced*. New York and London, 1907, pp. 88, 107.

⁶² *Ibid.*, p. 174. In the new edition of his *American Commonwealth*, Mr. Bryce, speaking of the Western States which have adopted the Swiss form of direct legislation, says that "they have taken what may prove to be a momentous new departure." New York, 1911, vol. I, p. 479.

⁶³ See above, p. 2.

⁶⁴ M. A. Schaffner, *Yale Rev.*, vol. XVIII, p. 206; Oberholtzer, *op. cit.*, pp. 455, 456.

⁶⁵ Oberholtzer, *op. cit.*, p. 455.

⁶⁶ *Pacific Outlook*, vol. VII, Dec. 18, 1909, p. 2.

precedent at that time,⁶⁷ this supposition must be dismissed as baseless. Mr. Haynes writes me that he "received the idea of the recall from reading 'The City for the People,' by Frank Parsons,"⁶⁸ where only a very hasty mention of it is made with no allusion to Switzerland.⁶⁹ Parsons was familiar with Swiss institutions but we have no evidence that he knew of the Swiss recall and therefore no reason for assuming even an indirect influence on this point.

Having shown why the Swiss experiment in direct democracy should interest Americans, I must now attempt to satisfy the curiosity these introductory pages were intended to stimulate.

II. DIRECT LEGISLATION IN SWITZERLAND

To what extent do the Swiss people exercise their legislative rights themselves? Why have they abandoned the purely representative form of government? What have they achieved thereby? These, I take it, are the three fundamental questions the reader expects me to answer.

1. *Present Status*

In order to avoid confusion and to save space, I shall begin by defining the various democratic devices now applied in Switzerland.

The popular initiative is the right of the people to propose legislative measures; the referendum, the right to refuse or accept them. According to the political area in which these rights are exercised, they are said to be federal (national), cantonal (state), or municipal (local); according to the measures they apply to, they are styled constitutional or legislative (statutory).⁷⁰ We will call the right by which a certain number of citizens may require the legislature to consider a given matter and submit a bill relating to it to the popular vote, the indirect initiative. The right by which they may require a bill, drafted without the intervention of the legis-

⁶⁷ As he assures me in a letter dated Los Angeles, May 6, 1912.

⁶⁸ *Ibid.*

⁶⁹ *Op. cit.*, p. 386.

⁷⁰ The plebiscite of a constitutional question was not formerly spoken of as a referendum in German Switzerland. In 1890 Hilty criticized Professor Dicey for this use of the term (*Politisches Jahrbuch der Schweizerischen Eidgenossenschaft*, 1890, p. 1066). But to-day the term *Verfassungsreferendum* is as common as the French equivalent, *référéndum constitutionnel*, which was used by a Swiss author as early as 1843. See A. E. Cherbuliez, *De la démocratie en Suisse*, 2 vols., Paris, 1843, vol. I, p. 85. In the official Swiss terminology *Volksabstimmung* and *votation populaire* are the current expressions.

lature, to be submitted to the popular vote, we will call the direct or formulative initiative. The referendum is termed compulsory, when it applies to bills which cannot become enforceable laws without having received the popular sanction; it is styled optional, when it applies to bills which are only submitted to the people when a petition of the citizens expressly and specifically requires them to be.

In Switzerland there is at present a *federal compulsory constitutional referendum*,⁷¹ a *federal optional legislative referendum*,⁷² and a *federal constitutional initiative*,⁷³ which may be exercised both indirectly and formulatively. A bill to introduce the *federal legislative initiative* has been pending before the Federal Assembly (Congress) ever since 1906, but has not yet been adopted. It has recently been reported on and will no doubt be discussed in the course of the present legislature.

In order to stand accepted any amendment of the federal constitution must be approved by a majority of the voters at a referendum and in a majority of cantons. All federal laws, and all federal resolutions (*Bundesbeschlüsse, Arrêts législatifs*) which have a general application and which are not of an urgent nature⁷⁴ must be submitted to the people, if, within three months of their acceptance by the Federal Assembly, the demand is made by 30,000 voters or by eight cantons.⁷⁵ The federal constitution, or any part thereof, must be submitted to the people for amendment if the demand is made by 50,000 voters.

In studying the initiative and the referendum in the different cantons we must leave out of consideration Uri, Unterwalden, Glarus, and Appenzell, where legislation is still proposed and enacted by the *Landsgemeinde* or direct mass meeting of the people. In democracies where the representative system has not yet been introduced, the initiative and the referendum, which are essentially schemes devised

⁷¹ Federal Constitution of 1874, art. 123.

⁷² *Ibid.*, art. 89.

⁷³ *Ibid.*, arts. 120-122.

⁷⁴ The Federal Assembly decides finally whether a measure is a law or a resolution and, if a resolution, whether or not it is of a general application and of an urgent nature. The legislature may therefore theoretically withhold any bill from the judgment of the people. But, hitherto, public opinion has always been strong enough to prevent any arbitrary action in this connection. L. R. von Salis, *Schweizerisches Bundesrecht*, Berne, 1891, vol. I, pp. 398 *et seq.*

⁷⁵ Ex-Senator A. J. Beveridge is mistaken when he claims that in Switzerland the referendum may be applied to executive decrees. Cf. his article in *The World To-day*, vol. XXI, December, 1911.

to overcome the disadvantages of that system, are naturally useless and therefore unknown.

In the nineteen other Swiss commonwealths the *cantonal compulsory constitutional referendum* everywhere prevails. In all the cantons but one (Fribourg) the *cantonal legislative referendum* has been introduced. In nine⁷⁶ of them it is compulsory for many important measures, especially those of a fiscal nature, and in nine⁷⁷ others it is optional in all cases.⁷⁸ The *cantonal constitutional initiative* is in force in all cantons, but in only a small minority can it be exercised formulatively.⁷⁹ The *cantonal legislative initiative* prevails in all but three⁸⁰ commonwealths.⁸¹ In two cantons,⁸² the constitution provides that in case of ambiguity, statutes may be interpreted by a popular vote.⁸³ In all the larger Swiss cities, the initiative and the referendum, the latter often compulsory in matters of public finance, have been introduced within the last thirty years.⁸⁴

The popular recall of public officials is little known and less practiced in Switzerland. In some cantons the people may dismiss their elected legislators and in others remove the executive board (*Regierungsrath, Conseil d'Etat*) or certain of its members, but in the memory of the present generation these rights have never been exercised.⁸⁵ As for the judiciary, which is elected by the people or by the legislature, it is nowhere, in so far as I have been able to ascertain, subject to popular recall. Short terms of office; a critical and honest press; a vigilant public opinion; simple political conditions; small political areas; the possibility of direct legislation; the subordinate position of the judiciary, who have not the American power of refusing to apply the law when it seems to conflict with the spirit of the constitution: all these circumstances combined render the recall superfluous in Switzerland.

⁷⁶ Zurich, Berne, Schwyz, Solothurn, Baselland, Graubünden, Aargau, Thurgau, Valais.

⁷⁷ Lucerne, Zug, Schaffhausen, Baselstadt, St. Gall, Ticino, Vaud, Neuchatel, Geneva.

⁷⁸ T. Curti, *Die Resultate des Schweizerischen Referendums*, 2d ed., Berne 1911, p. 4. Mr. Curti is the foremost contemporary writer on direct legislation in Switzerland. I wish to acknowledge gratefully the assistance derived from his several works in the preparation of this article. I have often been obliged to rely solely on his authority.

⁷⁹ When the formulative constitutional initiative was adopted for the Fed. Govt. in 1891, it had only been tried in Zurich, Schaffhausen and Ticino. C. Borgeaud, *Etablissement et révision des constitutions*, Paris, 1893, pp. 339, 344.

⁸⁰ Lucerne, Fribourg, Valais.

⁸¹ Curti, *op. cit.*, p. 3.

⁸² Solothurn and St. Gall.

⁸³ Curti, *op. cit.*, p. 4.

⁸⁴ Curti, *op. cit.*, pp. 10-16.

⁸⁵ Curti, *op. cit.*, p. 8. J. Dubs, *Das öffentliche Recht der Schweizerischen Eidgenossenschaft*, 2 vols., Zurich, 1878, vol. I, pp. 78, 87.

As for the so-called "recall of judicial decisions," if I have had the good fortune to understand rightly the significance of that infelicitous catch-word, it is familiar in Switzerland under the name of the constitutional initiative and referendum.

Such, briefly stated, is the present status of direct democracy in Switzerland. Let us now consider when and how the referendum, the initiative, and the recall came to be adopted.

2. Causes

The compulsory constitutional referendum, by far the most important of all varieties of popular legislation, was also chronologically the first to be introduced in modern Switzerland. The constitution of 1798, although it was not itself submitted to the people, provided that all future amendments should be ratified by "primary assemblies" (*assemblées primaires*).⁸⁶ This constitution was a close imitation of the French fundamental law of 1795;⁸⁷ and all the French revolutionary constitutions were very directly influenced by American models.⁸⁸ It is therefore not stretching historical truth, to claim that Switzerland owes the most essential feature of modern direct democracy to America.⁸⁹

The first Swiss constitution that was actually submitted to the people for ratification was that of 1802.⁹⁰ After the French July Revolution in 1830, a wave of democratic reform swept over Switzerland. As a result several cantons modified their form of government, and in all that did so, except Fribourg, the principle of the constitutional referendum was recognized. After 1848 no cantonal constitution was accorded the federal sanction unless it had previously been ratified by the people.⁹¹

Although a somewhat analogous institution had prevailed before in the Valais, in Graubünden, and in Geneva,⁹² one may say that the

⁸⁶ Helvetic Constitution of 1798, arts. 106, 107.

⁸⁷ A. Aulard, *Histoire politique de la révolution française*, Paris, 1901, pp. 543-579.

⁸⁸ This has been conclusively shown by Professor Borgeaud in his above quoted work. Cf. *op. cit.*, pp. 27-31, 243, 284.

⁸⁹ This debt has been expressly recognized by T. Curti, in his *Open Letter to Mr. George J. King*, reprinted in the January, 1910, number of the Equity Series.

⁹⁰ T. Curti, *Geschichte der Schweizerischen Volksgesetzgebung*, 2d ed., Zurich, 1885, p. 109.

⁹¹ Federal Constitution of 1848, art. 6, litt. c.

⁹² Cherbuliez, *op. cit.*, vol. I, p. 92. K. Hilty, above quoted article in *Archiv für öffentliches Recht*, 1887, pp. 172 *et seq.*; P. Linder, *Die direkte Volksgesetzgebung im schweizerischen Staatsrecht*, Halle 1905, pp. 41-70. Geneva Constitution of 1794, *Lois Politiques*, arts. 107, 108.

modern optional legislative referendum was also a product of the democratic movement of 1830. It was first introduced in St. Gall in 1831.⁹³ Baselland adopted it in the following year, Lucerne in 1854,⁹⁴ Vaud in 1845,⁹⁵ Schwyz in 1848.⁹⁶ It then spread rapidly, and to-day, as before remarked, Fribourg is the only canton which has not yet accepted it.

The federal constitution of 1848 underwent a general revision in 1874 and the optional legislative referendum was then introduced.⁹⁷ As Professor Borgeaud says, "it entered the federal constitution as a concession to minorities and a counterpoise to the new powers which the revised articles took away from the states in order to lodge them with the union."⁹⁸

The compulsory legislative referendum was introduced for all legislation in Baselland in 1863;⁹⁹ for the most important measures only, in Zurich, Thurgau, Berne, and Solothurn 1869 and in Aargau a year later;¹⁰⁰ for fiscal matters only, in Neuchatel in 1858, and in Vaud in 1861.¹⁰¹ In the cantons where the compulsory legislative referendum is most developed, the measures subject to popular ratification are voted on once or twice a year at dates established by law. In Berne, for instance, all important bills adopted by the legislature in the course of the preceding year, are voted on by the people on the first Sunday in May.

The constitutional initiative, in its primitive form, was simply the right of the people to demand a general revision of the fundamental law. This right was first proclaimed in a number of the cantonal constitutions drawn up after the revolutionary movement of 1830,¹⁰² and was looked upon as an extremely dangerous innovation by the conservative publicists of the day.¹⁰³ By 1848, however, it had been

⁹³ Curti, *Geschichte*, pp. 128 *et seq.*

⁹⁴ *Ibid.*, p. 126.

⁹⁵ *Ibid.*, p. 127.

⁹⁶ *Ibid.*, p. 207.

⁹⁷ Federal Constitution of 1874, art. 89.

⁹⁸ Borgeaud, "Practical results which have attended the introduction of the Referendum in Switzerland." *Arena*, vol. XXXIII, May, 1905, p. 482.

⁹⁹ Curti, *Geschichte*, p. 211.

¹⁰⁰ *Ibid.*, pp. 212-214.

¹⁰¹ *Ibid.*, p. 209.

¹⁰² Cherbuliez, *op. cit.*, vol. I, p. 83. The principle was already embodied in the Geneva Constitution of 1794, *Lois Politiques*, arts. 103-106.

¹⁰³ Cherbuliez, for instance, writes, "Je ne connais rien dans l'histoire qui ressemble à cette instabilité des institutions consacrée en principe et devenue le droit commun de treize peuples." He adds in a foot-note "Aux Etats-Unis d'Amérique les constitutions de New Hampshire, Vermont, et Indiana sont, si je ne me trompe, les seules qui n'accordent pas à la législature l'initiative exclusive des référendums constitutionnels." *Op. cit.*, vol. I, p. 85.

generally recognized to be what it undoubtedly is, a very effective safeguard against violent outbursts of popular discontent. It was therefore imposed on all cantons by the Federal Constitution,¹⁰⁴ which adopted it also for the federal state.¹⁰⁵

That the right to demand a general revision of the constitution implied the right to demand certain specific amendments thereof seems logically evident and legally certain. But although the Federal Constituent Assembly in 1848 had in clear terms expressed this to be its opinion, the national legislature in 1879 refused to consider a petition signed by more than 50,000 voters, requesting that the people be consulted on the expediency of amending the constitution on a particular point. This somewhat autocratic attitude of the legislators aroused a widespread feeling of discontent, which, after much desultory discussion, culminated in 1891 in the adoption by the people of a very radical measure. The principle of the federal formulative constitutional initiative was then embodied in the constitution.¹⁰⁶ Any 50,000 voters have thereby acquired the right to oblige the people to vote directly on any constitutional amendment they may see fit to propose. The adoption of this measure was somewhat anomalous, as it certainly was not in the line of a normal evolution that the federal constitution, the highest law of the land, should be rendered more easily amendable than all other federal, and than most cantonal legislation.¹⁰⁷

The cantonal legislative initiative was first introduced into Switzerland in the Vaud constitution of 1845.¹⁰⁸ The debates of the Constituent Assembly do not show whether this innovation was devised merely as an extension of the right of petition, or whether it was suggested by some radical writing of the day. It is certain, however, that the political revolution which broke out in Lausanne in 1845, was not uninfluenced by the contemporary communistic movement

¹⁰⁴ Federal Constitution of 1848, art. 6, litt. c.

¹⁰⁵ *Ibid.*, art. 113.

¹⁰⁶ Borgeaud, *Etablissement*, pp. 370 *et seq.*

¹⁰⁷ It shocked even so progressive a statesman as Numa Droz, who declared that by accepting this measure, the Swiss people had abandoned democracy for demagogy. Numa Droz, *Etudes et portraits politiques*, Geneva, 1898, p. 453.

¹⁰⁸ Curti, *Geschichte*, pp. 148-157. The legislative initiative was not new to the world in 1845. In the Girondine constitution of 1793, Condorcet had proposed a similar device, and this may have been suggested by American Colonial examples. Aulard, *op. cit.*, p. 285, C. S. Lobingier, *The People's Law*, New York, 1909, pp. 79, 80, 155, 358. Under the Geneva Constitution of 1794, any 700 citizens could, by right of petition, oblige their representatives to submit a bill to the mass meeting of the electorate. Acte Constitutif art. 34, Lois Politiques, arts. 107, 108, 513.

of German artisans, which had its center in the canton of Vaud; and it is at least possible that the very advanced reforms then introduced are in some degree related to that movement.¹⁰⁹ The chief cause of the Vaud constitution of 1845, however, must be sought in the general political situation of the country. Everywhere the demand for a stronger federal union was accompanied by a corresponding demand for more democratic institutions. When the first popular wish was finally satisfied by the adoption of the constitution of 1848, the second was for a time forgotten. But after 1860 the popular cry for more political rights was again raised and a series of cantons introduced the legislative initiative, Aargau as early as 1852,¹¹⁰ Baselland in 1863,¹¹¹ Zurich, Thurgau, and Solothurn in 1869.¹¹²

When, looking over the general political development of Switzerland in the course of the nineteenth century, we endeavor to discover the causes which led to the establishment of the initiative and of the referendum, we find that popular discontent with those in power was always and everywhere the most potent factor. In 1798, 1830 to 1833, and 1845 to 1848 the various cantonal governments had become unpopular because, the suffrage being indirect and far from universal, they rested on an aristocratic or oligarchical basis contrary to the democratic spirit of the times. In the latter half of the century the people were most often aroused by the partial, nepotic, or autocratic behavior of the men they had themselves elected to office. So in Neuchatel in 1858 the referendum in financial matters was introduced as a consequence of the government's railroad policy, which was unduly favoring one particular district.¹¹³ So in Zurich in 1869 the referendum and the initiative were adopted as protests and as safeguards against the public service corporations and large moneyed interests, whose influence on the government of the commonwealth and on the administration of justice was deemed threatening to public welfare.¹¹⁴ Many similar instances could be quoted.

¹⁰⁹ W. Marr, *Das junge Deutschland in der Schweiz*, Leipzig, 1846, pp. 287-289, 358; G. Adler, *Die Geschichte der ersten sozial-politischen Arbeiterbewegung in Deutschland*, Breslau, 1885, p. 69.

¹¹⁰ Curti, *Gesichte*, p. 208.

¹¹¹ *Ibid.*, p. 211.

¹¹² *Ibid.*, pp. 212-213.

¹¹³ *Ibid.*, p. 209.

¹¹⁴ *Ibid.*, pp. 215-238. No evidence has ever been produced in support of the charge of corruption which certain all too enthusiastic American advocates of direct legislation seem inclined to make against the government of Zurich before 1869. This government, headed by the able, honest, but autocratic Alfred Escher, distinctly represented the wealthy classes of the community. It was out of touch with the people and its prestige suffered severely during the "hard times" which prevailed in Zurich before 1870. See Dubs, *Die Schweizerische Demokratie in ihrer Fortentwicklung*, Zurich, 1868, pp. 72 et seq. Bürkli, *Direct Legislation by the People*, London, 1869, pp. 1-16.

As the initiative and the referendum were the product of discontent, it is natural that they should usually have been advocated by minority parties or by individual insurgents. Such has generally been the case and one can say that the general staff of the radical liberal party, which has been in power for over fifty years, has on the whole been opposed to the further extension of popular rights. Except in the cantons where the majority was conservative, most radical liberal leaders have either fought the initiative and the referendum or accepted them reluctantly as necessary concessions to public opinion.¹¹⁵

It is interesting also to note the constant relation existing between the movement in favor of direct popular legislation and that in favor of radical social and economic reform. Druey and Delarageaz, two of the leaders in the Vaud revolution of 1845, had been in close touch with the German communists Weitling and Marr.¹¹⁶ Treichler, who perhaps contributed more than any other writer to the introduction of the direct popular vote in the cantons of Eastern and Northern Switzerland after 1848, demanded labor legislation, public workshops, and gratuitous credit for the working classes, as well as the legislative referendum and recall, in his manifesto entitled "Political Principles."¹¹⁷ Karl Bürkli, one of the most zealous promoters of direct democracy in Zurich in 1869, was a disciple of Fourier and later a member of the International.¹¹⁸ Even to-day, after several disappointing experiences, the initiative and the referendum have no more ardent defenders in Switzerland than the socialists.

The historic origin of the Swiss recall is uncertain. This institution may be connected with the *grabeau*, the mode of censure of public officials practiced in Geneva until the end of the eighteenth century,¹¹⁹ and extended by Bonaparte, in a somewhat altered form, to Basle, Zurich, Schaffhausen, Berne, Lucerne, Fribourg, and Solothurn in 1802,¹²⁰ or it may be considered as an imitation of the

¹¹⁵ Dubs, *op. cit.*, p. 76. K. Hilty, *Theoretiker und Idealisten der Demokratie*, Berne, 1868, p. 27. S. Deploige, *Le référendum en Suisse*, Brussels, 1892, pp. 168-172. Borgeaud, *Etablissement*, p. 375.

¹¹⁶ Cf. note 109 above.

¹¹⁷ Adler, *op. cit.*, p. 71.

¹¹⁸ Curti, *Geschichte*, etc., p. 216.

¹¹⁹ Leonard Meister, *Abriss des Eydgenössischen Staatsrechts*, St. Gall, 1786, p. 342.

¹²⁰ See in *Acte de Médiation fait par le Premier Consul de la République française*, 2d ed., Lausanne, 1807, the constitutions of the above mentioned cantons.

French revolutionary *révocation*, which certain electoral bodies demanded in 1792;¹²¹ or it may have sprung from a spontaneous desire for popular democratic control. The slight practical importance of the recall in Switzerland would not justify a critical investigation of this question here.

3. Results

It is logically impossible to make any scientific statement with regard to the positive results of direct democracy in Switzerland.

We are tolerably well informed as to the political conditions prevailing before the introduction of the initiative and referendum, we know when and why these devices were adopted, and what uses they have been put to; but, as there is no way of ascertaining what would have happened if a purely representative form of government had been retained, our final judgment as to their merits cannot rest solely on their apparent results, but must always be somewhat influenced by the personal bias with which we approach the problem. It is easy enough to declare, as many eager propagandists have done, that, as Switzerland was a "boss-ridden" country seventy-five years ago and is now an ideal commonwealth, direct legislation, which was introduced in the interval, must be a panacea. That may be effective as campaign evidence; it is most unconvincing as an argument, since, even if we granted the premises, which are both grossly exaggerated, to say the least, the conclusion would by no means follow. As I have no ambitions beyond those of a student, I shall be content, before concluding, to give a few statistical notes on the actual working of the initiative and referendum in the federal government and in two of the largest cantons, and to mention the principal legislative tendencies displayed by direct democracy in Switzerland in the course of the last half century.

From 1874 till 1908 the Federal Assembly passed 261 bills and resolutions which could constitutionally be subjected to the referendum. Thirty of these 261 were actually voted on by the people, who ratified eleven and rejected nineteen of them. The effect of the federal optional legislative referendum was then to hold up a little more than seven per cent of the statutory output of the Federal Assembly. During the same period seventeen constitutional amendments were proposed, twelve of which were accepted, and five, that is twenty-nine

¹²¹ Aulard, *op. cit.*, p. 258.

per cent, of which were thrown out by the compulsory constitutional referendum. Since 1891 down to the present time, the initiative has been used eight times in endeavors to amend the federal constitution, six of these attempts have failed, three have succeeded.¹²²

From 1831 to 1910 the St. Gall legislature passed 395 bills. Thirty-six of these were submitted to the optional referendum and in thirty-one cases out of thirty-six the referred measure was defeated. A little over seven per cent of the measures proposed by the legislature in the course of eighty years were defeated by the popular vote. The constitutional initiative was tried three times in St. Gall since its introduction in 1891, but has always failed.¹²³

In the cantons where the legislative referendum is compulsory, it naturally acts as a more effective but less discriminating check on the legislature. In Berne, for instance, out of the 146 bills submitted to the popular vote during the forty-year period extending from 1869 to 1909, 35 were rejected, and 111 were ratified. During the same time the popular initiative was resorted to on nine different occasions, but succeeded only four times.¹²⁴

Quantitatively speaking, it can hardly be said that the Swiss people have abused their right and have unduly interfered with the activity of the legislature. No doubt one hears complaints now and then about the excessive frequency of popular votes,¹²⁵ but on examining the matter closely one finds that these protests usually spring from a feeling of dissatisfaction with the popular verdict, rather than with the institution of the popular jury which rendered it. A beaten team is naturally inclined to find fault with the rules of the game. What evil there may be with respect to a too frequent recurrence of plebiscites carries its remedy with it, as no group of individuals and no party is apt to risk its popularity by obliging the voter to go to the polls when he has already been wearied by too often repeated appeals to his civic conscience.

The quantitative use made of the popular vote in Switzerland has, on the whole, been conservative. Can the same be claimed for its qualitative effects?

¹²² Curti, *Resultate*, p. 36.

¹²³ *Ibid.*, p. 29.

¹²⁴ *Ibid.*, p. 26.

¹²⁵ About sixty per cent of the registered voters usually take part in the federal referendum. This fraction has fallen as low as 40 per cent in non-contested issues and risen as high as 77.6 per cent in the hotly fought battle over state ownership of railroads in 1898. It has not decreased in the last fifty years and is not lower in those cantons where local elections are most frequent than in others. *Ibid.*, pp. 68, 69.

In order to answer this question we must naturally distinguish between the initiative, which is essentially a positive institution, and the referendum, which, like the American executive veto, with which it has often been compared in Switzerland,¹²⁶ is essentially negative in its consequences. Curti has aptly compared the referendum to a shield for warding off undesirable legislation and the initiative to a sword which enables the people to "cut the way for the enactment of their own ideas into law."¹²⁷

The initiative has most often been used in Switzerland as a tool to undermine the position of the party in power. Thus the introduction of proportional representation, a system whose chief practical object is to strengthen minority parties, has usually been attempted by means of the initiative.¹²⁸ In several cantons it has succeeded, in the federal government, however, it has been twice defeated.¹²⁹ An initiative to introduce the election of the federal executive by the people has similarly been voted down.¹³⁰

The initiative has furthermore been resorted to in certain specific instances where the emotions of the people were more deeply aroused than those of their representatives. Such has quite frequently been the case in criminal matters. The national prohibition of the strong spirituous liquor called absinth was brought about by an initiative, launched under the immediate influence of a sensational murder committed by a drunkard on several members of his family.¹³¹ The initiative has similarly been used with varied success in attempts to suppress public houses of prostitution,¹³² to prohibit vivisection,¹³³ to reintroduce capital punishment,¹³⁴ and to reinforce penal law with respect to strike violences.¹³⁵

A third class of measures in favor of which the initiative has been

¹²⁶ For instance, in the Constitutional Debates in Zurich in 1842. Cf Curti, *Geschichte*, p. 144.

¹²⁷ Curti, *Open Letter*, etc. It is amusing in this connection to note the imaginative efforts of the authors who have discussed the referendum. Professor Dicey, for instance, compares it to "a check;" Ambassador Bryce to a "bit and bridle;" Professor Commons to a "club of Hercules;" Lord Curzon to a "broom" and Professor Oechsli refutes those, who would see in the institution "a grave of all progress" and a "drag!"

¹²⁸ Curti, *Resultate*, pp. 12, 27, 31, 32.

¹²⁹ By 244,570 nays against 169,018 yeas in 1900 and by 265,194 nays against 240,305 yeas in 1910. *Ibid.*, pp. 58, 59, 64.

¹³⁰ By 270,502 nays against 145,936 yeas in 1900. *Ibid.*, p. 59.

¹³¹ The initiators had collected the unusual number of 167,814 signatures and carried their point with the people on July 5, 1908, by 241,078 nays against 138,660. *Ibid.*, p. 62.

¹³² Succeeded in Zurich, but failed in Geneva. *Ibid.*, 24, 32.

¹³³ Partially succeeded in Zurich in 1895. *Ibid.*, p. 23.

¹³⁴ Succeeded in Zurich in 1883, but again repealed soon after. *Ibid.*, p. 23.

¹³⁵ Partially succeeded in Zurich. *Ibid.*, p. 24.

resorted to, are of an eccentric, and often of an extremely demagogic nature. Such are, for example, the "right-to-work clause," which the socialists sought to introduce into the Federal Constitution in 1894,¹³⁶ and the onslaught on the federal finances, which was attempted in the same year by a group of citizens who demanded that the federal government should hand over to the cantons a sum of two francs per head of the population out of the receipts of the customs.¹³⁷ Both these proposals were voted down by tremendous majorities.¹³⁸ The initiators had been encouraged by the success of a less perilous, if not less peculiar measure which had been adopted in 1893. By the popular initiative a constitutional amendment prohibiting the butchering of cattle according to the Hebrew rite, had in that year been added to the fundamental law of the country. This strange and illiberal measure, which had been carried, amidst the indifference of the public at large, thanks to the combined efforts of Jew-haters (*antisémites*) and of societies for the prevention of cruelty to animals, was the first product of the federal constitutional initiative.¹³⁹

The only constructive measure of importance, which Switzerland owes to this institution, is an amendment to the constitution by which the federal government in 1908 acquired the right to legislate on the subject of hydraulic resources when any national interest was at stake.¹⁴⁰ This right had before been vested in the individual cantons, and the Federal Assembly, whose members are often members also of the cantonal executive boards or legislative bodies, had not seen fit to take the first steps towards depriving them of it.

The actual worth of the initiative cannot be exactly estimated, as it has a potential as well as a direct influence. Besides its positive results in Switzerland, which have fully justified neither the hopes of its friends nor the alarms of its enemies, it may have acted on the spirit of the legislators as an animating and salutary threat. In how far this has been the case, we can but surmise, but it seems probable

¹³⁶ Cf. Borgeaud, "Le plébiscite du 4 Novembre, 1894," *Revue du Droit Public*, 1894, p. 536. Droz, *op. cit.*, p. 474.

¹³⁷ *Ibid.*, pp. 537-539.

¹³⁸ 308,289 yeas against 75,880 nays in the first case, 347,401 yeas against 145,362 nays in the second.

¹³⁹ Droz, *op. cit.*, p. 473. Borgeaud, *Le plébiscite*, p. 535; Curti, *Resultate*, etc., p. 51. The measure was carried by 191,527 yeas against 127,101 nays, the number of registered voters being upwards of 660,000.

¹⁴⁰ Curti, *Resultate*, p. 63, 304,923 yeas against 56,237 nays.

that the competition it establishes between the "ins" and "outs" of politics has had a stimulating effect on the former. We cannot, therefore, entirely agree with Mr. Frankenthal when he suggests, at the conclusion of his report to the Department of State, that an "ounce of American primary and representative prevention" may be worth a "pound of Swiss initiative cure."¹⁴¹ The initiative is not solely a cure; it is an incentive to good, active legislation and is therefore a preventive of sloth and corruption.

The referendum, we have said, is essentially negative in its effects. It gives the community a chance to refuse legislative gifts. It cannot add to its institutional wealth.

Without examining the hundreds of cases in which the Swiss referendum has shown that the views of the people do not always coincide with those of their elected representatives, I will mention three great popular tendencies which it has revealed.

The first is a dislike for bureaucracy. Whenever a bill tends to increase the influence of political officials it is sure to encounter a strong opposition at the polls. Many measures, such as the Federal Pension bill of 1891,¹⁴² or the Federal Banking bill of 1897,¹⁴³ have been rejected for just this reason, and many others which proved acceptable to the majority on other grounds, have been bitterly opposed by strong minorities on account of their bureaucratic tendencies and consequences.

Bills have also often been defeated in a referendum simply because the country was generally dissatisfied with its representatives and rulers. "Those people in Berne need a lesson," such has repeatedly been the somewhat irrational but very human argument of the average Swiss citizen, voting against some unimportant and by no means objectionable measure. This was particularly noticeable in 1884 when the referendum was demanded by nearly 100,000 voters on four federal bills at once, none of which was clearly unreasonable, but all of which were vetoed by large majorities.¹⁴⁴

¹⁴¹ Report to the Department of State by the American vice-consul at Berne, Switzerland, concerning "The practical workings of the Popular Initiative in Switzerland." *61st Congress. Senate Document, No. 126*, Washington, 1909, p. 32.

¹⁴² Defeated by 353,977 nays against 91,851 yeas. Curti, *Resultate*, p. 48.

¹⁴³ Defeated by 255,984 nays against 195,765 yeas. *Ibid.*, p. 54.

¹⁴⁴ This referendum was popularly styled the "four-humped camel." One of the humps was a bill to grant the Swiss embassy at Washington an additional yearly credit of \$2,000. Over 200,000 citizens thought it worth their while to vote against this act of extravagance, which they suspected to be prompted by motives of personal favoritism. *Ibid.*, pp. 45-47.

The referendum has furthermore worked against what one might call ideological legislation. Measures such as the "right-to-work" bill above referred to, which are grounded solely or mainly on abstract conceptions of justice, are almost certain to be defeated. The popular vote has time and again shown that the people are interested in the immediate practical benefits to be derived from a law, much more than in the intrinsic excellence of its basic principle. It follows that a defeated bill may very well be taken up again by its authors, modified in some of its minor details and submitted shortly after to a new judgment with every chance of success. Such was the case in Zurich when, in 1899, the people refused to contribute to the building of an art museum and reversed their decision seven years later.¹⁴⁵ Similarly the Swiss people vetoed a bill to introduce government ownership of railroads in 1891 and accepted an analogous measure in 1898.¹⁴⁶ In 1900 the people, by majority of nearly 200,000 nays, repudiated a Workmen's Compulsory Insurance bill that had been carried in both houses with only one dissenting vote.¹⁴⁷ A somewhat more liberal bill on the same subject was passed by the Federal Assembly in the spring of 1911 and ratified on February 4th of the present year by 286,630 yeas against 238,729 nays.

The third tendency shown by the referendum is a strong dislike for extravagance or, better said, for its necessary consequence. The people are by no means averse to fine public buildings and cheap government service, but when it comes to footing the bill they are very apt to object. This has been the case in the cantons and in the larger municipalities, where property and income taxes prevail, more than in the federal government, which relies on indirect taxation for its expenditures. The unfavorable financial situation of several commonwealths and cities is to be ascribed, in no small degree, to the referendum or rather to the inconsistent use made of it. Expenditures are tacitly approved, light, water rates and the like are lowered, but all attempts at a corresponding increase of taxes, especially on small and moderate incomes, are ruthlessly voted down.¹⁴⁸ The result too often is a steady aggravation of public indebtedness, as in

¹⁴⁵ Curti, *Resultate*, p. 14.

¹⁴⁶ *Ibid.*, pp. 48, 49, 56, 57. In the first vote there were 289,406 yeas and 130,729 nays and in the second 386,634 yeas and 182,718 nays. The proposed price of the purchase, which was considered exorbitant in the first case, was the main reason for the negative verdict in 1891.

¹⁴⁷ *Ibid.*, p. 57.

¹⁴⁸ Cf. *Ibid.*, pp. 12, 13, 14, 21, 26, 30. Almost every month the daily press in Switzerland records some incident of this kind.

Basle and Geneva, or an unduly high rate of taxation on large fortunes, with fiscal evasion as a logical consequence, as in Zurich and St. Gall.

III. CONCLUSIONS

I will not in conclusion take up one after another all the standard arguments for and against popular votes and discuss them academically as has so often been done. I will say, however, that, viewed in the light of Swiss experience, the apprehensions of those who predict that the initiative and referendum lead to social revolution are as unfounded as are the fears of those who expect these institutions to work against all cultural progress.¹⁴⁹ In Switzerland their result has simply been a legislation eminently characteristic of the national temperament. The Swiss have therein shown themselves as they are: a well-schooled, practical, unimaginative, thrifty, and enterprising people, averse to high-flown political speculation, but awake to the possibilities of careful progress; jealous of their local autonomy but not stubbornly loath to sacrifice it on the altar of national unity when the general interest clearly demands a sacrifice; suspicious of all superiority and hostile to all social and economic privileges, but still more suspicious of and hostile to all policies which tend to destroy the privileges of superior wealth and ability by encroaching too boldly on the personal liberty of all; impatient of arbitrary rule, but willing to submit to authority when imposed by the will of the majority, and especially when backed by historical tradition; unsentimentally sympathetic to deserving poverty, but almost harshly unfeeling towards thriftless indolence.

The initiative and the referendum have sometimes been accused of making party government impossible. This criticism, which would perhaps more justly apply to proportional representation, another novel electoral scheme which is making rapid progress in Switzerland, is not borne out by Swiss experience. All that can be said is that popular votes have somewhat strengthened the influence and self-confidence of minority parties.

¹⁴⁹ Such pessimists have not been wanting in Switzerland. Answering the popular "safety-valve" or "blood-letting" argument invoked in favor of direct legislation, Cherbuliez in 1843 expressed himself very deprecatingly on the subject of "those anticipating remedies which occasion the very evils they are meant to prevent," by "inoculating the masses with the virus of revolution." *Op. cit.*, vol. I, p. 89. Bluntschli was also very skeptical. Cf. his views in his *Geschichte des schweizerischen Bundesrechts*, 2 vols., 2d ed., Stuttgart, 1875, vol. II, p. 543.

It has also been claimed that they tend to weaken the elected legislators' sense of public responsibility by transferring the right of final decision on important measures to the people at large.¹⁵⁰ Where the referendum is compulsory this may be true. Where it is optional, however, I feel inclined to attribute the lowering of political standards, which seems to have taken place in Switzerland in the course of the last generation, to other causes and especially to the anonymous, impersonal committee form of procedure which prevails in all Swiss legislatures. All law-makers are afraid of a popular veto and this may tend to make them, not reckless or careless, but on the contrary unenterprising and over-timid. Against this very real danger the initiative seems to be the best safeguard.

Among the many stock arguments in favor of direct popular legislation, I will mention but one, which Swiss experience has undoubtedly shown to be sound, and that is the educational argument.

All political institutions that are democratic make for public enlightenment. Under the representative system, however, discussions on public policy too often degenerate into disputes on personal merits. One votes for or against individuals rather than for or against ideas, and the successful candidate is very apt to be the popular orator, whose genial appearance, winning ways, and very often unscrupulous, demagogical methods, please the people by flattering their prejudices and their passions. In the referendum, on the other hand, objective argument counts for much more. And every one will agree that it is morally as well as intellectually better to vote at the dictate of one's reason, rather than on the impulse of one's instinct.

It has time and again been shown in Switzerland that a politician who has once gained the people's good will can repeatedly favor measures to which his electors object, without in the least thereby injuring his popularity. A humorist, quoted by Professor Borgeaud¹⁵¹ once remarked, "The Swiss are a singular people; they disown their representatives and then they re-elect them." This illustrates what is perhaps less a singularity of the Swiss, than an inconsistency

¹⁵⁰ Dubs, *op. cit.*, p. 20; Droz, *op. cit.*, p. 464; A. B. Hart, *Actual Government*, New York, 1906, pp. 79, 81. It is characteristic that this argument seems to have most strongly appealed to British statesmen. See the English periodical literature quoted above, *passim.*, and Sir J. MacDonald, C. B., "The Referendum vs. Representative government," *Cont. Rev.*, March, 1911, p. 307.

¹⁵¹ In an article published in the *Revue de Droit Public*, 1896, p. 528.

common to the whole human race. Who, in the arena of politics as well as in the realm of romance, does not sometimes disown the choice of his natural sympathy when he is reasonable? And who does not ratify that choice when he is passionate? And is any one ever quite reasonable and quite dispassionate in matters of personal preference?

To my mind the greatest advantage of the optional referendum lies in the fact that, on some momentous occasions in the life of a nation, it gives reason a hearing amidst the din and confusion of current politics.

It has not been my object in this article to defend a cause, but to present the results of a practical experiment, and this I have sought to do as impartially and concisely as possible. No community in Switzerland, having once exercised the rights of initiative and referendum, has ever abandoned them,¹⁵² and to-day nobody in Switzerland seriously considers the possibility of a return to the unmitigated representative system.¹⁵³ It by no means follows that these rights are absolutely just nor always and everywhere beneficial. Still the practically unanimous endorsement of direct legislation by the nation most familiar with its working, is a presumption in its favor which no careful student of the subject can wilfully overlook.

The controversy in Switzerland no longer bears on the principle of the initiative and referendum, but on their form. Shall the initiative be direct or indirect? Shall the referendum be optional or compulsory? On these points opinions vary. I can do little more than briefly mention their divergencies here.

It is, I believe, generally admitted to-day that, although in some extreme cases the formulative initiative may be the only means of beating down the opposition of a stubborn legislature, it is an unwieldy weapon at best. Under ordinary circumstances, when the people's will can be made sufficiently clear without being expressed in a drafted bill, it is far more expedient to entrust the elected representatives with the task of framing a measure, before submitting it to the popular vote.

In discussing compulsory vs. optional referendum the Swiss example is commonly alluded to as showing the superiority of the

¹⁵² In only two cases has direct legislation been restricted. Berne in 1880 and Zurich in 1899 somewhat limited the scope of their compulsory referendum. Curti, *Resultate*, p. 4.

¹⁵³ On this point ex-Senator Beveridge is certainly right. See his above quoted article in *The World To-day*, vol. XXI, Dec., 1911, p. 1472.

former over the latter.¹⁵⁴ Several prominent Swiss publicists have, it is true, written against the optional plebiscite,¹⁵⁵ but I can see nothing in the Swiss experience that justifies their views on this point. The principal argument in favor of the compulsory referendum is that it avoids the "agitation" inherent in the optional mode. Agitation, however, is but the inevitable concomitant of public discussion, and every one must admit that, in a democracy at least, discussion with agitation is certainly better than no discussion at all. As I see it, the great advantage of the optional referendum is that it tends to concentrate attention on the principal policies of the legislature. And it is obvious that the electorate will vote more discriminatingly on a few important bills than on the whole output of a legislative session. In the United States, where the elected law-makers seem particularly generous in the annual number of statutory gifts they bestow upon their constituents, the disadvantages of the compulsory referendum should be still greater than in Switzerland. If, notwithstanding these circumstances, it is generally adopted and is not intended to be wholly ineffective as means of intelligent criticism, its application should be constitutionally restricted to certain important measures.¹⁵⁶

In the United States, as elsewhere, the introduction of direct legislation is apt to encounter a two-fold opposition.

Its first enemies are the intellectual aristocrats of the Hamiltonian temperament, who believe in "government by gentlemen,"¹⁵⁷ who with Taine hold that "a nation may perhaps say which form of government it likes, but cannot say which it needs,"¹⁵⁸ and who declare with Earl Grey that "the proper object of a government, and especially of a representative legislature, is not to meet the wishes of a majority of the population, but to adopt such measures as may be best calculated to promote their welfare."¹⁵⁹ Men of this type naturally and consistently deprecate the referendum as an "appeal from knowledge to ignorance."¹⁶⁰ I should be the last to deride

¹⁵⁴ J. W. Sullivan, *Direct Legislation*, p. 17; A. L. Lowell, *Atlantic Monthly*, vol. LXXIII, April, 1894, p. 517; A. V. Dicey, *Cont. Rev.*, vol. LVII, April, 1890, p. 496.

¹⁵⁵ See particularly Hilty, above mentioned article in *Archiv für öffentliches Recht*, 1887, p. 405.

¹⁵⁶ This is admitted even by its warmest friends. See for instance Hilty, *loc. cit.*, p. 405, and Curti, *Resultate*, p. 70.

¹⁵⁷ Lecky, *op. cit.*, p. lxii.

¹⁵⁸ See the preface to the *Origines de la France contemporaine*.

¹⁵⁹ *National Rev.*, vol. XXIII, March, 1894, p. 78.

¹⁶⁰ *Edin. Rev.*, vol. CLXXI, Jan., 1890, p. 139.

them for it, as demagogues are in the habit of doing before popular audiences. But I ask: can their philosophy long survive the adoption of universal suffrage and the general recognition of the fact that, as Karl Bürkli bluntly put it in 1869, "interest is the determining cause in matters of legislation."¹⁶¹ The masses are not composed of "gentlemen," and gentlemen's interests very often conflict with those of the masses. For the average voter, the best representative is no longer the most intelligent nor even the most honest, but he who most faithfully, because most selfishly, represents the local or class interest of his constituents. This very much limits the opportunity of "gentlemen" in politics. When it will have become evident that representative government can no longer be a gentleman's game, then the upper privileged few in the community, whose interests are often those of culture and of higher civilization, may not find it inexpedient to favor the initiative and especially the referendum. They have done so in Switzerland. Is there any reason why they should do otherwise in the United States?

The other class of opponents of direct legislation profess to believe in government by the people, but have some misgivings about the practical results of applied democracy. They are not averse to allowing the masses to choose their representatives freely, but they rely, for their own personal security, on the discrepancies which may arise between the acts of the majority of the elected and the desires of the majority of the electors. To state their position in these terms is to show its inconsistency; and I do not think that I have stated it unfairly.

In theory, therefore, the further extension of popular control by means of direct legislation seems inevitable in all countries where universal suffrage prevails. In practice Swiss experience may perhaps disappoint those of its American friends who expect it to accomplish sudden constructive reforms; but it should certainly reassure those of its foes who fear its destructive revolutionary effects.

At this juncture of American history, when public safety and intelligent progress are alike threatened by Syndicalism,—admittedly the movement of a "conscious, militant minority,"—it would seem that direct legislation, which cannot but assure the rule of the majority, should receive the support both of conservatives, in the interest of safety, and of radicals, in the interest of progress.

¹⁶¹ See *Senate Document No. 840*, 55th Congress, 2d Session, Washington, 1898, p. 31.

THE REFERENDUM AND INITIATIVE IN MICHIGAN

By JOHN A. FAIRLIE, PH.D.,

Professor of Political Science, University of Illinois, and Member of the
Michigan Constitutional Convention, 1907-8.

To those who consider the Oregon plan of the initiative and referendum as the ideal and perfect form of direct popular legislation, there may seem little occasion for giving any attention to the State of Michigan in a study of this method of direct democracy. The provisions in the constitution of 1908 for the popular initiative of constitutional amendments and a referendum on acts of the legislature are limited and restricted in comparison with those of Oregon; and thus far the method of proposing amendments has not been called into operation. Nevertheless, Michigan is a state which has in the past made an extensive use of the popular referendum on constitutional amendments and some other measures; and its experience in this field throws light on the value of this procedure. Moreover the process by which the provisions of the new constitution were formulated serves to illustrate some of the problems of constructive legislation; and the provisions themselves are of interest as an attempt to meet some of the criticisms on the Oregon plan.

The Referendum, 1835-1908

The first State Constitution of Michigan, adopted in 1835, was submitted to popular ratification, at a time when such a referendum was becoming common, but before this practice had been definitely established throughout the United States. This constitution also provided that amendments thereto should be submitted to popular vote; and further contained what was then a novel provision authorizing the legislature to submit to popular vote a proposal for a convention "to revise or change this entire constitution."

Few referendum votes were taken under the provisions of this constitution. In 1849 an amendment was submitted and adopted making the judges of the supreme court elective; and a year later a constitutional convention was called. The second constitution, of

1850, was also submitted to popular vote and adopted. This constitution repeated the provisions of the first for a popular referendum on constitutional amendments and on proposals for calling a convention to revise the constitution; and further provided that general banking laws must be submitted to a vote of the electors. In the case of constitutional amendments and general banking laws a majority only of those voting on each proposition was required; but in the case of proposals for a constitutional convention a majority of those voting at the election was necessary.

Under these provisions no less than eighty-five separate propositions were submitted to popular vote in Michigan from 1850 to 1908. Most of these were constitutional amendments; but on two occasions general banking laws were referred to popular vote, seven times a proposal to call a constitutional convention was submitted, and three revised constitutions have been placed before the people.

The number of propositions submitted have been fairly well distributed throughout the period. From 1858 to 1868 there were fourteen proposals referred to popular vote; and in the subsequent decades the number of propositions ranged from sixteen to nineteen. Generally two or three measures have been proposed together; and the largest numbers at one election were five in 1862 and six in 1870.

Some noticeable differences are, however, shown in the date of submitting proposals and in the results of the popular vote. Up to 1886 referendum measures were usually submitted at the November general elections. Since 1886, two-thirds of the propositions have been voted on at regular or special elections in April.¹ Of the measures submitted up to 1866 all but one were adopted; but of the thirty-five popular votes during the next twenty years, only twelve were favorable; while during the next two decades there has been an increasing tendency to approve the proposals: from 1889 to 1899, nine proposals were adopted and twelve were defeated; from 1900 to 1908, fifteen proposals were approved and only three have failed. The later years thus show a decided increase in popular approval of proposed changes, which culminated in the adoption of the revised constitution of 1908 containing a large number of important alterations in the fundamental law of the state.

¹ Regular state elections are held in April of odd numbered years for judges of the supreme court and regents of the university.

Of more importance is the question as to the degree of popular interest shown in the questions submitted. A comparison of the number of votes on these questions with the total number of votes cast at the same elections offers some evidence on this point. This shows a large range both in the number of votes and in the percentage of votes at the election. The smallest degree of interest is indicated on the five measures submitted in 1862, when the vote for and against these measures ranged from 4,463 to 6,711, or from less than four per cent to barely five per cent of the vote of 130,818 cast for governor at the same time. Such a vote clearly cannot be taken as indicating any popular opinion on the questions submitted.

On the other hand the largest vote was that on an amendment changing the method of assessing and taxing the property of corporations, submitted in November, 1900, on which a total vote of 497,485 was cast, more than ninety per cent of the vote for governor at a presidential election. Here the popular interest was manifest; and the result of the vote was decisive—nearly nine to one in favor of the proposed amendment.

In most cases, however, the vote on measures referred to the people has ranged from forty to sixty per cent of the total vote cast at the election; and the affirmative vote has usually been less than half of the total vote at the election. In a number of cases the vote on measures has been less than twenty per cent of the total vote at the election. In several others, the vote on measures has approached seventy per cent of the total vote at the election. In a few cases where propositions have been submitted at a special election, the vote has of course equaled the total vote at the election; but has been in such cases usually not more than fifty per cent of the vote cast at a general November election.

An examination of the Michigan figures fails to show any evidence that the size of the vote has been affected to any large degree by changes in the method of balloting, as has been the case in Illinois.² In recent years all measures submitted to popular vote have been voted on special ballots distinct from those containing the names of candidates for office; and this arrangement has served to call the attention of voters to the proposals. On the other hand, with the exception of the revised constitution of 1908, no special efforts have

² C. O. Gardner, "The Working of the State-wide Referendum in Illinois." *American Political Science Review*, v, 394 (1911).

been made to acquaint the voters with the precise nature of the proposals. The statements on the ballots have usually been vague and indefinite; and in few cases had there been any active discussion of the measures submitted.

Under these circumstances, the number of votes cast on many of these proposals has been larger than might be expected; and indeed on some measures of little or only local importance the number of votes has been so much larger than any evident public interest in the question, as to indicate a practice on the part of many voters of voting indiscriminately for or against all measures submitted to popular vote. Thus the considerable number of proposals relating to circuit courts and boards of auditors applied only to particular counties, and could have had no general interest throughout the state. Yet on such measures a vote of about fifty per cent of the total vote of the state was ordinarily cast.

In spite of the considerable vote cast even on minor questions, it is worth noting that very few proposals would have been adopted if it had been necessary to secure a majority of all the votes cast at the election, as is required in Illinois and some other states. No less than forty constitutional amendments adopted by a majority of those voting on each question would have failed if the Illinois requirement had been in force. Only six of the amendments adopted received a majority of the vote cast at the election; and three of these were measures submitted at special elections in 1878 and 1880. The three amendments receiving such a majority at regular elections were those relating to soldiers voting (in 1866), the taxation of corporations (in 1900) and public wagon roads (in 1905).

Even the revised constitution of 1908, which received a majority of 114,000 votes, would have failed if a majority of all voting at the election had been required.

On the question of calling a convention to revise the constitution, where a majority of those voting at the election is required, this provision served to prevent the calling of a convention on three occasions (1892, 1898 and 1904), on two of which there was a considerable majority of a fairly representative vote in favor of a convention.³ The proposal in fact did not carry until submitted at a

³ In 1866 the vote in favor of calling a constitutional convention was slightly less than a majority of the vote cast at the election; but the convention was held, only to have its revision of the constitution rejected.

special election, in 1906, when the vote on the question was the same as the total vote at the election.

Michigan's experience with the referendum suggests certain conclusions which should be applied in any plan for the further use of such popular votes on public questions. In the first place much of the detail in state constitutions or laws submitted to popular vote should be eliminated, so as to avoid the necessity for proposing amendments on matters not likely to arouse public interest. Secondly, more care should be taken to acquaint the voters with the content and purpose of measures submitted to popular vote. Thirdly, there should be a requirement of a certain minimum vote in order to carry referendum proposals; but this requirement should be less than a majority of all voting at the election. It will be noted in the following paragraphs, that these lessons were to some extent considered in framing the provisions relating to the initiative and referendum in Michigan's recent constitutional convention.

The Constitution of 1908

In the Michigan Constitutional Convention of 1907-08 the question of direct legislation, in the form of the popular initiative on constitutional amendments, aroused more interest and discussion than any other; and a survey of this discussion and its results will throw some light on the process of developing a general principle of policy into a formulated enactment. In the steps leading up to the constitutional convention there had been some attention given to the initiative and referendum. The State Grange and some labor organizations had endorsed this proposal; and efforts had been made to secure pledges from candidates for delegates to the convention. But the small vote cast at the election of delegates and the close division of opinion among the delegates elected indicated the absence of intense popular sentiment on this question, in marked contrast with the almost unanimous sentiment of the convention on the question of municipal home rule.

Among the members of the convention three main groups could be recognized in reference to the initiative and referendum. A considerable number, but distinctly less than a majority, were in favor of substantially the Oregon plan of direct legislation. On the other hand, almost half the delegates were opposed to any step in this direction. Between these were a number of moderates,

favoring some method for direct popular action, but desirous of devising a plan which would obviate the dangers of hasty and ill-considered measures.

Under these conditions, even the more radical members waived their extreme proposals, and concentrated their energy on a restricted plan for proposing constitutional amendments by popular petition. As the result of several informal conferences, a proposal was drafted for proposing amendments by petition of twenty per cent of those voting at the preceding election, to be submitted at a regular election not less than ninety days after the required petition was filed, and to require for adoption a vote of not less than one-third of that cast at the election. In this form, the proposal was reported by a majority of the committee. On a motion to strike out the whole proposal a four days' debate took place, in which more than half the delegates took part, and the whole question was thoroughly discussed.

During the debate, a substitute proposal was presented. This provided that signatures to petitions should be verified by registration or election officials, required the submission of proposed amendments to the legislature, and provided for voting on alternative proposals on the same subject. This substitute was at first strongly opposed by the more radical delegates; but after the failure of a special conference committee to reach a compromise, the substitute was accepted and passed at the end of the debate in committee of the whole, but by a close vote and with less than the majority of the whole convention which was necessary to secure final adoption.

In the interval of about a week before second reading, further changes were suggested and discussed outside of the formal meetings of the convention; and the final test votes were between two new substitutes, each containing changes from the proposal previously voted. One of these contained a clause providing that the legislature in joint session might prevent submission to popular vote of an amendment proposed by popular petition. The other omitted the legislative veto, but contained additional restrictions. Both proposals were indeed so well safeguarded that action under either would be difficult. On second reading, the provision including the legislative veto was adopted, with the support of some of the moderates.

As finally adopted the section provides that amendments to the constitution may be proposed by petition of the electors, verified by registration or election officers; and when petitions for an amend-

ment are presented signed by twenty per cent of the vote cast for secretary of state, the proposed amendment must be submitted to the electors, unless disapproved by a majority of the legislature in joint session. When an amendment is proposed by petition, an alternative or substitute proposal may be submitted by a joint majority vote of the legislature. For adoption, such proposed amendments must receive an affirmative vote equal to one-third of the vote cast at the election.

This form of the initiative may be said to recognize the demand for more direct popular action in determining important questions of government; and in spite of the conditions, it should make possible constitutional changes for which there is a strong popular support. But it is undoubtedly difficult to secure the adoption by this process of a proposal urged only by a small minority, as is possible under the Oregon system. In regard to the restrictive conditions, it seems to the writer that the requirements for a twenty per cent petition, for verification of signatures, and for a one-third vote are each justifiable, taken separately, as a means of securing adequate evidence of popular support. But it may be admitted that in combination they offer a very serious obstacle; and that with proper verification of signatures and an adequate vote for adoption the percentage of petitioners might safely be reduced. It may be noted, however, that all the later proposals on this subject before the Michigan convention contained all of these restrictions.

The most vigorous opposition on the part of the pronounced advocates of direct legislation was aroused by the possible legislative veto, which in form conflicts with the theory of direct popular action. To the writer, it seems—as it did in the convention—that its practical effect is of relatively little significance. The legislative disapproval must be openly expressed by a clear majority of all the members; and indeed a majority of either house in favor of the proposal by refusal to go into joint session could prevent disapproval by a larger majority opposed to it in the other house. Under these conditions, legislative disapproval of any amendment which complied with the other conditions seems very improbable.

The provision for alternative proposals recognizes a situation which would be likely to arise wherever measures proposed by popular petition must be presented to the legislature before submission to popular vote, as is provided in several plans now proposed, *e. g.* in

Wisconsin and Ohio. Unless methods are provided for dealing with such alternative proposals, it would easily be possible to confuse the electors and defeat any measure proposed by submitting one or more additional measures on the same subject at the same time.

Thus far no amendment has been proposed under the provisions of the Michigan constitution. This is perhaps due in part to the restrictions in the method provided; but may also be explained by the fact that the revised Michigan constitution itself met most of the urgent demands for important changes. Efforts have been made to have the legislature submit an amendment, by the older process of a two-thirds vote of each house, for the Oregon plan of direct legislation; but as yet these efforts have not succeeded.

Several other provisions of the revised Michigan constitution extend the scope of direct popular action in political affairs. The municipal home rule provisions authorize the electors of each city and village to frame, adopt and amend its charter; and the home rule law provides for the popular initiative in proposing amendments to home rule charters. Several cities have already adopted new charters under these provisions. Special legislation is restricted; and in any case no special act shall go into effect until approved by the electors in the district to be affected, a referendum which effectively prevents any possible ripper legislation on local affairs. The legislature is also authorized to submit any act to a referendum vote, a procedure previously prevented in the case of general laws by a decision of the supreme court. On the other hand the former requirement of a referendum on banking laws has been omitted as no longer necessary and unduly restrictive.

Further provisions in regard to the printing of bills and reserving to a majority of each house the power to take bills from a committee ensure a wider publicity and more consideration to legislation; and thus give more opportunity for public opinion to influence the work of the legislature.

Moreover, in the provisions for the future revision of the constitutions, any possible attempt on the part of a legislature to control and limit the revision is prevented. When a constitutional convention has been authorized by a vote of the electors, the election of delegates, the meeting of the convention and the submission of its work to the final vote of the electors are fully authorized without further action by the legislature.

Finally the revised constitution makes some provision to secure wider publicity for proposed constitutional amendments when submitted to popular vote. Formerly such amendments were voted on ballots which gave only a vague mention of the subject of the section to be amended, usually with no indication as to the nature of the proposed amendment. It is now provided that all proposed amendments must be published in full and posted at each registration and election place; while separate ballots for voting on amendments is made a definite requirement.

In the case of the revised constitution itself further steps were taken to acquaint the voters with the instrument they were to adopt or reject. The address to the people adopted by the convention formed a pamphlet stating briefly the important changes in the new constitution, and also giving in full the new constitution, with a short statement after each section explaining its relation to the old constitution and noting the changes proposed. This address was printed in sufficient numbers for each voter in the state, and was distributed to the voters through the postoffice. By this means every voter was given ample opportunity to learn the nature of the new instrument of government; and this general publicity was an important factor in securing its ratification.

Viewed as a whole, the revised Michigan constitution marks a distinct advance in the newer *forms* of direct popular action; and what is of more importance, by these and other provisions, it greatly enlarges the influence of public opinion on the work of the government. Compared with recent constitutions and constitutional amendments in other states, it may seem conservative, both in substance and in its relative brevity. But it shows real and permanent progress in the direction of present tendencies; and is perhaps a more valuable subject of study, at least in the older states, just because it is less radical than some of the experiments in the younger commonwealths of the American Union.

REFERENDUM VOTES IN MICHIGAN

(Compiled from Michigan Manuals)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
Nov., 1835	First state constitution.....	6,752	1,374	8,126	8,372	Adopted
Nov., 1850	Second state constitution.....	36,169	9,433	45,602	60,131	Adopted
Nov., 1850	Amendment—Equal suffrage to negroes....	12,840	32,026	44,866	60,131	Rejected
Nov., 1858	General Banking Law.....	41,006	19,865	60,871	121,402	Adopted
Nov., 1860	Amendment—As to banking corporations....	59,954	15,477	75,431	155,027	Adopted
Nov., 1860	Amendment—As to legislative sessions.....	53,152	18,246	71,398	155,027	Adopted
Nov., 1860	Amendment—Eminent domain.....	62,936	8,054	70,990	155,027	Adopted
Nov., 1862	Amendment—Removals from office.....	3,180	1,273	4,453	130,818	Adopted
Nov., 1862	Amendment—As to banks.....	5,067	1,644	6,711	130,818	Adopted
Nov., 1862	Amendment—Regents of the University....	4,363	1,901	6,264	130,818	Adopted
Nov., 1862	Amendment—Elections in upper peninsula..	5,193	1,440	6,533	130,818	Adopted
Nov., 1862	Amendment—Method of revising constitution.....	4,375	1,806	6,181	130,818	Adopted
Nov., 1866	Amendment—As to soldiers voting.....	86,354	13,094	99,448	164,454	Adopted
Nov., 1866	Constitutional convention.....	79,505	28,623	108,128	164,454	Adopted
April, 1868	Revised constitution.....	71,733	110,582	182,315	182,315(b)	Rejected
April, 1868	Amendment—Annual sessions of legislature.....	24,482	100,314	124,796	182,315	Rejected
Nov., 1870	Amendment—Prohibition of liquor traffic....	72,462	86,143	158,605	182,315	Rejected
Nov., 1870	Amendment—Boards of supervisors' powers..	39,180	61,904	101,084	186,277	Rejected
Nov., 1870	Amendment—Salaries of state officers.....	36,109	68,912	105,021	186,277	Rejected
Nov., 1870	Amendment—"Impartial suffrage".....	54,105	50,598	104,703	186,277	Adopted
Nov., 1870	Amendment—Regulation of railroad rates....	78,602	51,397	129,999	186,277	Adopted
Nov., 1870	Amendment—Restricting railroad consolidations.....	76,912	51,194	128,106	186,277	Adopted
Nov., 1870	Amendment—Railroad aid bonds.....	50,078	78,453	128,531	186,277	Rejected
Nov., 1872	Amendment—Railroad aid bonds.....	44,684	70,893	125,577	222,511	Rejected
Nov., 1872	Amendment—Judicial circuits.....	47,972	65,848	113,820	222,511	Rejected

REFERENDUM VOTES IN MICHIGAN—(Continued)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
Nov., 1872	Amendment—Salaries of circuit judges.....	57,326	58,987	116,323	222,511	Rejected
Nov., 1874	Amendment—Woman suffrage.....	40,077	135,957	176,034	221,006	Rejected
Nov., 1874	Revised constitution.....	39,285	124,034	163,319	221,006	Rejected
Nov., 1876	Amendment—Liquor license.....	60,639	52,561	113,200	316,808	Adopted
Nov., 1876	Amendment—Salaries of circuit judges.....	65,371	65,966	131,037	316,808	Rejected
Nov., 1876	Amendment—Time of submitting amendments.....					
Nov., 1876	Amendment—Clerk of supreme court.....	52,306	21,984	74,290	316,808	Adopted
Nov., 1878	Amendment—Corporation stockholders liability.....	30,313	34,712	65,025	66,834(b)	Rejected
Nov., 1880	Amendment—Salary of governor.....	24,770	42,064	66,834	66,834(b)	Rejected
Nov., 1880	Amendment—Detroit river bridge or tunnel.....	49,035	91,753	140,788	140,788(b)	Rejected
Nov., 1881	Amendment—Penal fines for libraries and schools.....	37,340	58,040	95,380	349,034	Rejected
Nov., 1881	Amendment—Clerks of courts.....	51,475	8,370	59,845	.....	Adopted
Nov., 1881	Amendment—Circuit courts.....	62,593	6,640	69,233	.....	Adopted
Nov., 1882	Amendment—Salaries of circuit judges.....	53,840	6,628	60,468	.....	Adopted
Nov., 1882	Amendment—Boards of county auditors.....	85,705	55,638	141,341	314,719(c)	Adopted
Nov., 1882	Constitutional convention.....	23,814	38,073	61,887	314,719	Rejected
Nov., 1884	Amendment—Salaries of circuit judges.....	20,937	35,123	56,060	314,719	Rejected
Nov., 1884	Amendment—Compensation to legislators.....	35,345	28,642	63,987	410,348	Adopted
Nov., 1886	Amendment—Wayne county board of auditors.....	31,693	52,707	84,400	410,348	Rejected
Nov., 1886	Amendment—Salaries of state officers.....	15,020	20,755	35,775	380,885	Rejected
Nov., 1887	Amendment—Liquor traffic.....	40,445	60,220	100,665	380,885	Rejected
Nov., 1887	Amendment—Salaries of state officers.....	178,636	184,281	362,917	.....	Rejected
Nov., 1888	Amendment—Circuit courts.....	72,718	124,838	197,556	.....	Rejected
Nov., 1888	General banking law.....	21,221	19,382	40,603	474,777	Adopted
Nov., 1889	Amendment—Circuit courts.....	48,531	20,300	68,831	474,777	Adopted
Nov., 1889	Amendment—Duration of corporations.....	49,478	19,834	69,312	.....	Adopted
Nov., 1889	Amendment—Duration of corporations.....	35,269	28,950	64,219	.....	Rejected

April, 1889	Amendment—Salary of governor.....	111,854	72,494	184,348	.....	Adopted
Nov., 1890	Constitutional convention.....	16,431	26,261	42,692	398,655(c)	Rejected
April, 1891	Amendment—Salary of attorney-general.....	69,248	69,651	138,899	.....	Rejected
Nov., 1892	Constitutional convention.....	16,948	16,245	33,193	468,637	Failed (d)
April, 1893	Amendment—Salaries of state officers.....	59,317	70,772	130,089	.....	Rejected
April, 1893	Amendment—Internal improvements.....	72,745	52,476	125,221	.....	Adopted
April, 1893	Amendment—Jurisdiction of circuit courts.....	62,023	48,797	110,820	.....	Adopted
April, 1893	Amendment—Highway commissioners.....	69,050	59,922	128,972	.....	Adopted
Nov., 1894	Amendment—Voting rights.....	127,758	29,607	157,365	.....	Adopted
Nov., 1894	Amendment—Qualifications of electors.....	117,088	31,537	148,625	416,988	Adopted
April, 1895	Amendment—Salaries of state officers.....	50,065	139,039	189,104	.....	Rejected
April, 1895	Amendment—Circuit courts.....	60,567	92,278	152,845	.....	Rejected
April, 1897	Amendment—Salary of attorney-general.....	70,138	90,973	161,111	394,805	Rejected
April, 1897	Amendment—Kent county board of auditors.....	53,201	57,793	110,994	394,805	Rejected
Nov., 1898	Constitutional convention.....	162,163	127,147	289,310	421,164	Failed (d)
April, 1899	Amendment—Improvement of highways.....	130,416	93,442	223,858	400,187	Adopted
April, 1899	Amendment—Additional circuit judges.....	108,197	104,884	213,081	400,187	Adopted
April, 1899	Amendment—Intermediate courts.....	99,391	102,269	201,660	400,187	Rejected
April, 1899	Amendment—State printing office.....	105,711	108,317	214,028	400,187	Rejected
Nov., 1900	Amendment—Taxation of corporations.....	442,728	54,757	497,485	548,214	Adopted
April, 1901	Amendment—Compensation of legislature.....	112,883	187,615	300,498	377,324	Rejected
April, 1901	Amendment—Additional circuit judges.....	110,855	130,108	240,963	377,324	Rejected
Nov., 1902	Amendment—Publication of general laws.....	155,837	105,241	261,078	402,226	Adopted
Nov., 1902	Amendment—Indeterminate sentence.....	146,265	78,338	224,603	402,226	Adopted
April, 1903	Amendment—Payment of circuit judges.....	105,618	83,048	188,666	368,375	Adopted
April, 1903	Amendment—Boards of county auditors.....	108,889	84,636	193,525	368,375	Adopted
Nov., 1904	Constitutional convention.....	165,123	120,018	285,141	524,721	Failed (d)
Nov., 1904	Amendment—Introduction of bills.....	180,157	98,657	278,814	524,721	Adopted
April, 1905	Amendment—Public wagon roads.....	205,750	63,506	269,256	389,231	Adopted
April, 1905	Amendment—Genesee county board of auditors.....	94,860	64,825	159,685	389,231	Adopted
April, 1905	Amendment—Compensation of circuit judges.....	91,994	63,590	155,584	389,231	Adopted
April, 1906	Constitutional convention.....	196,780	127,189	323,969	323,969(b)	Adopted
April, 1907	Amendment—Compensation of circuit judges.....	94,585	61,550	156,135	356,157	Adopted

REFERENDUM VOTES IN MICHIGAN—(Continued)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
April, 1907	Amendment—Boards of county auditors....	98,259	62,008	160,267	356,157	Adopted
April, 1907	Amendment—Against teaching convicts cer- tain trades.	167,163	84,831	215,994	356,157	Adopted
Nov., 1908	Amendment—Taxation of corporations.	227,899	137,500	365,399	541,767	Adopted
Nov., 1908	Revised constitution.	244,705	130,783	375,488	541,767	Adopted

(a) Usually vote for governor or supreme court judges.

(b) No state officers elected.

(c) Michigan Manual 1907, p. 383.

(d) Majority of all voting at the election required.

MAINE'S EXPERIENCE WITH THE INITIATIVE AND REFERENDUM

BY J. WILLIAM BLACK, PH.D.,
Professor of History, Colby College, Waterville, Maine.

As the result of an agitation of several years standing, and in response to the petitions of a number of towns in "The District of Maine," as that portion of Massachusetts now comprising the State of Maine was then known, the General Court of Massachusetts, on June 19, 1819, passed an act, entitled the "Articles of Separation," giving the people of Maine the privilege of voting upon the proposition of separating from Massachusetts and forming "a separate and independent government within said district." At a special election held in Maine in July of the same year, in accordance with the provisions of the articles of separation, the people voted by a large majority to separate, and in the following October held a convention in Portland and framed a constitution for the proposed new state. Massachusetts confirmed this procedure, February 25, 1820, by the passage of the act of cession, in which the general court formally consented to the creation of a separate state in "The District of Maine;" and an act of congress, passed March 3, 1820, admitted Maine to statehood and decreed that the recognition of Maine as a state in the Union should date from March 15, 1820.

The constitution, which was adopted in 1819, has served the state ever since as its fundamental and organic law, without radical change or without the calling of subsequent constitutional conventions. Changes in the constitution have been made, however, through the process of amendment, twelve such amendments being added between 1819 and 1875. In the latter year, the governor of the state, in lieu of the calling of a convention, and by the authority of the legislature, appointed a constitutional commission to recommend further changes in the constitution. This commission proposed a number of amendments, and of this number nine were adopted by the people in the annual election of September, 1875. The nine amendments, together with the twelve previously adopted,

were incorporated by the chief justice of the state, acting under the authority of the legislature, into the body of the constitution, and the instrument in its revised form was approved by the legislature, February 23, 1876, and became forthwith "the supreme law of the state." By such procedure a revised constitution was secured without the trouble, expense, and delay incident to the calling of a constitutional convention.

Since 1876, thirteen other amendments have been added to the constitution, including the change from annual to biennial elections in 1879, the prohibitory amendment in 1884, and the referendum law of 1909.

In the adoption of all these amendments, the method prescribed in the constitution (art. x, sec. 2) has been followed; that is, the amendments were first passed by a two-thirds vote of both houses of the legislature, and then submitted to the people of the several towns throughout the state who ratified the amendment by a majority vote.

In 1875, a new amendment was incorporated in the constitution (amendment XIX),¹ which, for the first time authorized the legislature "by a two-thirds concurrent vote of both branches," . . . to call constitutional conventions, for the purpose of amending the constitution.

No use has yet been made of this constitutional amendment, in spite of the fact that the constitution is now more or less a piece of patchwork, due to numerous amendments, and should be subjected to a thorough revision and rearrangement. One great obstacle that stands in the way of the calling of a constitutional convention is the constant fear on the part of a considerable portion of the people that such a revision would result in the reading out of the constitution of the prohibitory law—a condition that has proved a barrier to progressive legislation in the State of Maine.

Maine has felt the influence of the agitation for direct legislation which has spread with great rapidity over the country from west to east, and which began with the action of the people of South Dakota, who were the first to incorporate the initiative and referendum in their state constitution as early as November, 1898. The example of South Dakota was followed in 1900 by Utah, and again in 1902, by Oregon, where the new legislation has had its best and

¹ Now article IV, part third, section 15.

severest test, and has found its most ardent advocates. The Oregon law represents the extreme of direct legislation, and includes a provision for the initiation of constitutional amendments. Much of the credit for the passage of this law is due to the effective and efficient work of an organization known as The People's Power League, which has since continued its activities and has proved an organized instrument for promoting direct legislation on behalf of the people under the new law. In 1904, Nevada adopted the simple referendum, which applies only to statute law; and in 1907, the new State of Oklahoma embodied in her constitution a radical initiative and referendum provision. These experiences, especially those of Oregon and Oklahoma, were observed with interest by the people of Maine. Maine has the distinction of being the first of the eastern states to enact an initiative and referendum law, which was put into effect in 1909.

The history of this movement in Maine covers a period of five years. There has long been a feeling of unrest among important elements of the electorate regarding certain questions of local importance. Maine has vast tracts of unorganized and unsettled lands, some ten million acres in extent, which are owned by a comparatively small number of individuals and corporations, an area which is covered with valuable timber, and has an assessed valuation of fifty million dollars, and, indeed, is probably worth several times that amount. These "wild lands," as they are called, owing to the low valuation assessed upon them and the small state and county taxes which they pay, have yielded an inconsiderable amount of revenue to the state. They are sources of enormous profits to the individuals and corporations owning them, and the feeling is growing that they should pay a larger tax, in the interest of a more equitable distribution of taxes among the people of the organized townships, who are burdened with heavy municipal, as well as county and state taxes, and therefore pay a disproportionate share toward the support of schools and highways.

So liberal has been the policy of the state in the past in disposing of its wild lands, including the earlier grants, in 1836 and subsequent years, to settlers, which were justifiable, and the large grants to railroads and sales at nominal cost to individuals that were made in the period from 1862 to 1875, which were questionable; that almost the entire area, some fourteen thousand square miles

in extent, or the equivalent of one-half of the total area of the state, is in private hands, and the state now retains but a paltry fifty thousand acres of its former vast public domain. Because of their low valuation these lands contribute through taxation less than one-ninth of the state's revenues from direct taxation.²

The influence of a powerful lobby at the state house has been successful in heading off efforts to increase the tax on wild lands; and the owners of these lands are strongly fortified by a decision of the Supreme Court of Maine, which prohibits the taxing of wild lands at a higher rate than the state tax imposes upon the settled areas. There seems to be no other way to meet this situation save through the passage of a constitutional amendment, subjecting these lands to a separate classification and independent treatment, but such a proposal has thus far failed to produce results.

To be sure the preservation of the forest is necessary to the preservation of the rivers and upon these the people are dependent for water power, a source of energy with which nature has abundantly endowed the state. The forests are also necessary to the maintenance of the game preserves, which attract thousands of hunters and fishermen to the state every year, and thereby bring large sums into the coffers of the merchants and the railroads—an argument which has constantly served as a defense of low state taxes. The gains from this source, however, are not a sufficient offset for the losses incident to the failure to pursue a policy that would force the development of new agricultural lands, open up the state to larger settlement, and attract immigrants to promote latent industries and increase the wealth of a somewhat backward state.

Maine has also been liberal in the grant of valuable franchises for little or no return, and through her lax corporation laws has become the mother of numerous corporations, many of which should never have been authorized, and whose only justification seemed to be the fees which they yielded, a considerable part of which,

² The state tax upon real estate prior to 1910, as shown in the state treasurer's reports, averaged about three mills on the dollar; in 1910 it was increased to five mills, and in 1911 to six mills in order to provide additional funds to pay off a portion of the state debt which had been heavily increased, as noted later on; and for the present year (1912) the rate has been fixed at four mills. This tax yields approximately \$1,800,000 of state revenue and three-fourths of this is returned to the towns for school purposes, leaving only one mill for general use. One-ninth of this amount is contributed by the wild lands, which pay also a county tax of two mills. Furthermore, the nine million acres in unorganized townships are now organized into what is called a "fire district," and pay a special tax of one and one-half mills for fire protection, which makes the total tax resting upon these lands seven and one-half mills.

until quite recently, were divided between two of her leading state officials, the secretary of state, and the attorney-general.³

The state has also been liberal in the past in rebating the taxes of her railroads, and in granting other privileges and exemptions which have cost her revenue. These are some of the reasons why Maine has been unable to meet the growing demand for better roads, which should be constructed by the state rather than by the local area, and for the improvement of her schools and other state institutions.

Maine's remarkable water power facilities have not been developed beyond a fraction of their possibilities; the Maine farmer has been more conservative and less progressive than his western rival, except in certain industries in which he has shown some specialization, like the cultivation of potatoes in Aroostook County. There has been too much protection and too little reciprocity in both commodity and labor to give Maine the benefit of the rich iron and coal deposits of her neighbor to the north and east, which might well have been turned to the advantage of the state for the employment of her natural resources of stream and forest, and in the saving of a great industry, shipbuilding, in which Maine had such an early and promising start.

These are some of the sources of dissatisfaction with the economic status of the state as it is, and the causes of the migration of so many of the sturdy sons of the Pine Tree State to other states and more enterprising industrial communities. It is often charged that the politicians and "bosses" are responsible for this condition of affairs and have preferred to cover their own pecuniary transactions in wild lands, and in the granting of favors to corporations, by diverting attention from these interests to the issue of prohibition. Hence the interest in the new policy of direct legislation.

Mr. Roland T. Patten, of Skowhegan, formerly editor of the *Somerset Reporter*, was the first to undertake to secure the initiative and referendum for Maine. He was formerly a republican and for a number of years held the office of county treasurer of Somerset county. In 1902 he made an effort to get his party, in county convention, to adopt a plank favoring the adoption of the principles

³ Formerly the attorney-general and the secretary of state received fees of five dollars each from the organizers of every corporation under the laws of Maine, and these fees in some years amounted to as much as eight thousand dollars for each official. This system was changed by act of legislature in 1905, and since then all corporation fees have been turned into the state treasury.

of direct legislation. Being unsuccessful, he left the party, and became a leader of the socialist party⁴ in Maine, and an ardent propagandist of direct legislation. He succeeded in inducing the democratic party to embody such a plank in its platform in 1902. In the legislative session of 1903, a resolve, drawn by Mr. Patten, and presented by the Hon. Cyrus W. Davis, of Waterville, first brought the subject of the initiative and referendum to the attention of the Maine legislature. This measure was referred to the judiciary committee and after a hearing it was voted to refer the matter to the next legislature. The subject was discussed in the gubernatorial campaign of 1904, and enlisted the support of the State Federation of Labor, by whom, through its legislative committee, the campaign for direct legislation was now actively prosecuted. This organization then enlisted the support of the State Grange, and secured petitions, memorializing the legislature, which met in 1905, to enact a bill providing for the submission to the people of a constitutional amendment embodying the initiative and referendum. Such a bill was accordingly presented to the legislature, referred, as before, to the judiciary committee, and after a public hearing, participated in by representatives of the State Federation of Labor, the Grange, the Maine Civic League, and other interested persons, including several advocates of direct legislation from out of the state. An adverse majority report was rendered by the judiciary committee, and though the minority report, which was favorable, was substituted by the action of both houses in the early stages of the progress of the bill, the measure was defeated in its final stages; a turn of affairs, which was charged to the influence of the corporation lobby.

The two attempts thus far had been unsuccessful, but the fight was continued, and preparations were now made for a more systematic campaign. In the summer of 1905, the State Referendum League, similar in purpose to its prototype, the People's Power League in Oregon, was organized, and its constitution sets forth the purpose of the league; namely, to secure "the people's right to a direct vote on questions of public policy." The organization was to be "inter-partisan in membership, its methods . . . non-partisan," and the support of candidates for public office was to be based on the "candidate's attitude toward the purposes of this league." The executive committee of officers of the league was

⁴ The socialist party has at present a total strength of about fifteen hundred votes.

assisted by an advisory council, consisting of sixteen members, or one from each county in the state. In article II of its constitution, the league applied the principles of the initiative, referendum, and the recall to its own affairs. Mr. Patten became the press agent of the league, and Mr. Kingsbury B. Piper, of Waterville, its secretary.

The league first endeavored to obtain the support of the master of the State Grange, Obadiah Gardner, now senator from Maine, but was unsuccessful. Nevertheless, the grange itself, at its annual meeting in December, 1905, adopted resolutions favoring the initiative and referendum. Following this action, the league succeeded in securing the adoption of favorable planks in the platforms of both the republican and democratic parties, and both candidates for the governorship in 1906 favored the proposed legislation. The league also carried on a persistent campaign through the mails, calling upon every possible or prospective candidate for the legislature in 1906 to declare himself in a written communication to the league, and to answer "Yes" or "No," to the question whether or not he favored the initiative and referendum. Those who failed to respond at all after a second or third letter of inquiry, were put down as "opposed," and the league directed its energies toward the defeat of such candidates for the legislature of 1907, and in a number of instances was successful. This campaign was greatly strengthened by the political support of the grange, with its sixty thousand members, and the result is seen in the legislation that followed.

The judiciary committee was still opposed to direct legislation, likewise the president of the senate and the speaker of the house, and these obstacles had to be met. There was also a considerable opposition lobby. Still another difficulty presented itself, for the republicans and democrats differed over the scope of the measure they were willing to support. The republicans favored the application of the initiative and referendum to statute law only, while the democrats favored the inclusion of constitutional amendments in the proposed law, as in Oregon and Oklahoma and other states where popular legislation has been tried, and saw in the new legislative device an opportunity to secure a resubmission of the Maine prohibitory law to the voters. It was the latter possibility that made the followers of the prohibition party⁵ hesitate at first to accept the proposed law, but, upon being convinced that it would not affect the status of prohibition, they gave it their support also.

⁵ The prohibition party normally polls about 1,400 votes in a state election.

It was necessary to reconcile these differences, because of the large democratic representation in the legislature, and in order to secure the necessary two-thirds majority required by the constitution. The republican leader of the house, Hon. George G. Weeks, of Fairfield, presented a bill authorizing the initiative and referendum for statutes only, and conforming with the measure favored by the Referendum League, while the Hon. Charles F. Johnson, of Waterville, now United States senator, introduced a democratic measure, which included constitutional amendments; adding, however, the additional safeguard of requiring double the number of petitioners demanded in the case of a statute law to secure the application of the initiative and referendum to a constitutional amendment. Both party leaders were otherwise in accord on the bill, and the democratic leaders in both houses generously agreed that if the minority (democratic) report should not be substituted by the action of the legislature for the majority (republican) measure, they would vote for the latter; and upon the failure to secure the substitution of the minority for the majority report, they and their colleagues made good their promise, with the result that the Weeks resolve went through without opposition, and was signed March 20, 1907, by Governor Cobb, who had already proclaimed his support of the law, on the ground that it was demanded by public sentiment.

The act was then submitted to the people for ratification or rejection, and a campaign of education was waged among the voters until election day in September, 1908, in order to inform them of the uses and advantages of the proposed amendment. More opposition was encountered from the press and from prominent political leaders, but in spite of this opposition, the measure was ratified by a vote of 53,785 to 24,543; in fact every county in the state voted "Yes." The governor made due "return" of the result to the legislature of 1909, as required by the resolve, and the new law forthwith became a part of the constitution of the state. The essential features of the law are as follows:

The act establishes a people's veto through the optional referendum and provides that, upon receipt, within ninety days after the recess of the legislature, of a petition signed by ten thousand voters, and addressed to the governor and filed in the office of the secretary of state, asking for a reference to the people of any act or resolve of the legislature, the governor shall give notice by proclama-

tion of the time when such measure is to be voted upon by the people, that is, at the next general election, not less than sixty days after such proclamation, and if there be no general election within six months thereafter, he may, and if so requested in the petition must, order a special election not less than four months nor more than six months after his proclamation.

Likewise, twelve thousand electors, by direct petition addressed to the legislature and filed in the office of the secretary of state thirty days before the close of the session, may propose to the legislature any bill or resolve, excepting amendments to the state constitution, which, unless enacted by the legislature without change, shall be submitted to the people. If enacted by the legislature without change, it shall not go to a referendum vote, unless demanded. The governor may, or if so requested shall, order any measure proposed by twelve thousand electors referred to a vote of the people at a special election or at the next general election, in accordance with the provisions of the act. Any measure approved by a majority vote shall take effect, unless otherwise ordered in the law, thirty days after the proclamation of the governor announcing the result of the election.⁶

After the adoption of the initiative and referendum law, the league addressed its attention to the furthering of the following measures: namely, a direct-primaries law, a corrupt practices act, and a new ballot law; demanding that the legislature enact such laws, and threatening in the event of failure, to secure such legislation through the agency of the initiative.

In the election of September, 1908, the people also voted to adopt another amendment to the constitution, which was submitted to them, in accordance with a resolve passed by the legislature and approved March 28, 1907, and which permits the people to vote on constitutional amendments on the second Monday in September immediately following the passage of the "resolve," instead of waiting until the next regular biennial election of the following year, as formerly required by the constitution as amended in 1879.

⁶ The above law is similar to the referendum laws of other states in minor details and in provisions for the filing and preparation of petitions and ballots, for the guarantee of the integrity of the signatures of the petitioners, for the establishment of the initiative and referendum in cities for municipal affairs; and in the denial to the governor of the power to veto acts approved by the people under the terms of this law. Limitations of space do not permit the incorporation in this article of the full text of the law which may be found in *Acts and Resolves of the Legislature of Maine* for 1907, chapter 121.

This law went into effect in January, 1909, and constitutes the eleventh amendment since the revision of 1876.

The referendum law has been put to the test four times, the referendum having been used three times and the initiative once; while, in addition, three proposals to amend the constitution have been submitted to the people since the passage of the referendum law. Upon three laws passed by the legislature of 1909, the people demanded the referendum, and these were submitted to popular vote in the election of September 12, 1910, to be voted upon on the same ballot.

The first one, known as Measure No. 1, was entitled "'An act to make uniform the standard relating to the percentage of alcohol in intoxicating liquors,' and providing that alcoholic liquors which may not be sold except by payment of a revenue tax to the United States government shall be declared to be intoxicating liquors within the meaning of all statutes of this state;" in other words, a law fixing the standard of the state the same as the United States revenue standard of one per cent.

Measure No. 2 was entitled "An act to divide the town of York, and establish the town of Gorges," and provided that a certain part of the town of York, in the county of York, shall be set off from the remainder of the town and incorporated into a separate town by the name of Gorges, and that the said town of Gorges should pay for the construction of a new bridge across York River at York Harbor, and for the readjustment and distribution of taxes and other obligations between the two towns.

Measure No. 3 was entitled "An act relating to the reconstruction of Portland bridge," and authorized the county commissioners of Cumberland county to reconstruct the old bridge across Portland Harbor, connecting Portland and South Portland, at such a grade as to cross the tracks of the Maine Central and Boston and Maine railroads, and at a cost not exceeding five hundred thousand dollars, the expense of the construction and maintenance of the bridge to be borne by the county of Cumberland, the Boston and Maine railroad, the Maine Central railroad, and any street railroads that may acquire the right to use the bridge.

While all three of the above measures were placed upon the same ballot for the action of the voters, there are marked variations in the character of the proposed legislation and the results of the

election. Measures 2 and 3 were purely local issues, involving questions in which the mass of the electorate, outside of the communities directly concerned, had little interest, and this is reflected in the vote cast. Scarcely more than one-third of the voters who voted for governor, the candidates for that office polling a total vote of 141,031, took advantage of the privilege of voting on the above questions, while over fifty per cent of the voters voted on the liquor measure, which made a wider appeal, and enlisted, as usual, the greatest interest and occasioned the most debate.

All three measures were rejected, the vote standing as follows:

The Vote.	Yes.	No.
No. 1.....	31,093	40,475
No. 2.....	19,692	34,722
No. 3.....	21,251	29,851

Some of the reasons for these results appear in the following explanations:

The first measure was devised by the prohibition element to stop the sale of numerous light beers, containing a relatively small percentage of alcohol, and to increase the prospect of success in numerous prosecutions for violations of the "Maine Law," in which the defense was frequently urged, often with success, that the liquor in question was not an intoxicating beverage within the meaning of the law, or according to the interpretation of the courts. No active campaign was made on behalf of the measure by the Civic League and other temperance organizations, and it was rejected by the people.

The second measure was the result of a desire on the part of the summer resort community of York Harbor, Maine, to secure a separate town organization and to be free from the control of the "back country" or farming element in the town of York, which usually dominated town meetings and town appropriations, and, according to the claims of the seashore element, had not given the summer resort interests a square deal in the way of appropriations for better roads and sidewalks, and for adequate sewer and lighting privileges. The town of York is one of the largest in the county and has a winter population of 2,600, which increases in the summer to eight or ten thousand people. The controversy, which culminated in 1909, has waged for a decade, and became acute in 1907 over the question of building a bridge across the York River at York Harbor.

The seashore residents, who wanted the bridge, succeeded in inducing the town to vote "to build a bridge as laid out by the county commissioners" and to appoint a "Committee of Four" to act with the three selectmen in building a bridge. But no appropriation was made. The selectmen, backed up by the farming element, opposed the bridge, and the Committee of Four, who represented the seashore residents, out-voted them, and went ahead and built the bridge at a cost of forty-five thousand dollars. Then followed a chapter of agitation over the legality of the action of the Committee of Four, a question still pending in the courts, and the failure of the town government to complete payments on the bridge or to provide for the operation of the draw, which involved the town in a further controversy with the War Department. The War Department compelled the town to open the draw, and some private and tentative arrangement has since been made for its operation. In 1909 this family quarrel was taken to the legislature, where a bill was offered to divide the town of York and establish the new town of Gorges, which was to embrace York Harbor, York Village, and a part of York Corner; or, in other words, the richest part of the town of York, containing two-thirds of the assessed property valuation of the town. It was presented by Representative Marshall, of Portland, whose father is the proprietor of the Marshall House, the leading hotel at York Harbor. This measure, for ostensible reasons, contained no provision, as is usual in such cases, giving the people of the town the privilege of voting upon the proposition. It passed the legislature in the face of an adverse report of the committee on towns and in spite of the strenuous opposition of the representative from York, Mr. Josiah Chase, who, in a spirit of compromise, offered to leave the decision to those voters only who lived within the precincts of the proposed town of Gorges—an eminently fair proposition. These terms were rejected, however, by the friends of the measure, who had the strong support of the Portland delegation and other representatives in the legislature, and in consequence the people of the town of York invoked the referendum and defeated the act by a decisive vote. Undoubtedly, there was merit in the case on both sides, coupled with much ill-feeling and lack of tact. If the bridge controversy had not arisen or if the building of it had been committed to the selectmen alone, with instructions to borrow the necessary money and proceed with the construction, the bill for

the separation of the town would probably never have been presented to the legislature. The weak point in the act was the failure to give the town the benefit of the referendum on a matter of purely local concern. The case was aptly expressed by Attorney-General W. R. Pattangall, who was then a member of the legislature, and who spoke in opposition to the Marshall measure. "I have never before heard," he said, "of a divorce where the action was opposed by both the husband and the wife, and the petition for divorce was presented by the hired girl."

The third measure was likewise a matter of purely local interest, and one that should have been settled by the people of Cumberland county alone. To permit the whole state to vote upon such a question, local, technical, and minute, and without any real knowledge of the merits of the question, is a travesty upon wise legislation. After its passage by the legislature, and without provision for its reference to the people of Cumberland county, opponents of this measure invoked the referendum law, which required a state-wide vote, and succeeded in defeating it, in spite of the fact that there was a pronounced public sentiment in favor of the reconstruction of this old and worn-out bridge. Considerable campaigning was done in Portland, and the discovery of the usurpation by the Boston and Maine Railroad Company of rights of way for additional tracks on the "county way," without legal authority, and the attempt made by the railroad interests, in the framing of the measure, to legalize by said act "all such railroad crossings on the county way which forms the approach to said bridge," occasioned distrust of the motives behind the act, and caused its rejection by the people.⁷

In the election of 1910 just referred to, in which the new referendum law was given its first test, a political overturn resulted in the election of the democratic candidate for governor, the Hon. Frederick W. Plaisted, and a democratic legislature which stood 86 to 65 in

⁷ In the same election (September, 1910) four questions were submitted to the voters of the county of York, as follows:

1. Shall the shire town of York county be changed?
2. If it be changed, shall Saco be the shire town?
3. If it be changed, shall Kennebunk be the shire town?
4. If it be changed, shall Sanford be the shire town?

The town of Saco was anxious to secure the removal of the county seat from York to Saco, and the representatives of the former town and their supporters secured the passage of the above legislative act, submitting these questions to the action of the electorate—the usual procedure in cases of local concern. The citizens of Saco worked hard and conducted an active campaign, but the measure was defeated by a vote of 8,021 to 3,697; though Saco secured the largest preference vote (3,775) among the bidders for the county seat, in the event of a change. See *Laws of Maine* for 1909, ch. 183, p. 506.

the house; and 23 to 8 in the senate. The principal issue of the campaign which contributed largely to democratic success was the question of the "resubmission of the Prohibitory Law," coupled with the abolition of the obnoxious "Sturgis Law" of 1905, which gave to the "Sturgis Commissioners" and their deputies the right to invade cities and towns throughout the state and supersede the local authorities, where necessary, for the enforcement of the "Maine Law." While the fathering of this issue by the democratic party helped it to victory, the weakness of the Fernald administration that preceded, and the increase of the state debt by \$1,500,000 without specific provision for its payment, opened that administration to charges of extravagance and inefficiency, produced a noticeable apathy among republican voters generally, and contributed to democratic success.

In fulfilment of party pledges, the Maine Legislature of 1911 repealed the Sturgis Law, February 25, 1911,⁸ and passed a resubmission act,⁹ in the form of a proposal to amend the constitution of the state by abrogating and annulling "the twenty-sixth amendment adopted on the eighth day of September, 1884, relating to the manufacture and sale of intoxicating liquors;" the vote in favor of this resolve being 104 to 40 in the house, and 23 to 7 in the senate, an ample margin above the necessary two-thirds.¹⁰

An active and bitter campaign was waged throughout the state during the summer of 1911, in the press and on the stump, the state was placarded, and the Anti-Saloon League and the Woman's Christian Temperance Union brought the forces of their organizations both within and without the state to bear upon the campaign. The result of the September election was very close, remaining in doubt for some days. The first announcements gave the victory to the resubmissionists, but later corrections of errors, due to carelessness on the part of town clerks in reporting the returns of certain outlying townships to the secretary of state, which were rectified in the canvass before the governor and council, showed a "No" vote of 60,853, and a "Yes" vote of 60,095, or a majority of 758 against resubmission, and in favor of the retention of the Maine Law.¹¹

⁸ See *Public Laws of Maine*, 1911, ch. 4.

⁹ See *Resolves of Maine*, 1911, ch. 35.

¹⁰ While this was essentially a democratic measure, twenty republicans in the house and one in the senate voted in favor of the resolve.

¹¹ It is an interesting circumstance that all of the cities of Maine voted for resubmission with the single exception of Calais, a small city of 6,116 population on the New Brunswick border.

On the same ballot with "Question No. 1," which was submitted to the people in the election of September 11, 1911, were two other proposals to amend the constitution, known as "Questions No. 2, and No. 3," and also a "Direct Primaries Act" (Question No. 4), which was the first and only act thus far "initiated" by the people under the provisions of the new referendum law.

Question No. 2 was a proposal to amend the constitution making Augusta the seat of government in the state. The purpose of this measure was to settle permanently the question of the location of the capital, and quiet an agitation for the removal of the capital to Portland, which began as far back as 1886. Portland's effort to secure the capital in that year was defeated before the legislature, and was renewed again in 1907, when her citizens offered to contribute a million dollars toward the construction of a new and larger state building, if the capital were removed to the latter city. This second effort was defeated through the activities of resourceful representatives and citizens in Augusta, who, in the following legislature of 1909, secured an appropriation of \$350,000 for the repairing and enlargement of the capitol building, and who organized a private syndicate, The Augusta House Company, for the improvement of the hitherto inadequate hotel facilities of the capital city. The enlarged capitol was completed and occupied by the legislature for the first time in 1911. Fearing a renewal of the agitation for removal to Portland, especially if Portland should be permitted to increase her debt limit to seven and a half per cent, a proposition placed before the people on the same ballot, the above resolution was enacted and the electorate voted by 59,678 to 41,294, to retain the seat of government at Augusta. The putting of such a measure into Maine's fundamental law is of doubtful value.

Question No. 3 was likewise a proposal to amend the constitution, its purpose being to permit "towns having a population of forty thousand inhabitants or more, according to the last census taken by the United States, to create a debt or liability which, single or in the aggregate, equals seven and one-half per centum of its last regular valuation, provided the increase in the amount of debt be no greater than one-quarter of one per centum over the present rate of five per cent in any one year." The direct object of this measure was to allow the city of Portland, the only city in the class designated in the resolution, to disregard article xxii of the consti-

tution, which imposes a maximum debt limit of five per cent of their property valuation upon cities and towns, and to extend her debt limit for the purpose of borrowing needed funds for municipal improvements, including payment for her new city hall, and the improvement of her highways and bridges. The proposed amendment was adopted by a vote of 39,242 to 38,712; and a precedent was established which may be used in the future to break down the constitutional debt limit of five per cent now resting upon other cities and towns, which to-day is a serious handicap to them and stands in the way of the public acquisition and management by the municipality of enterprises and utilities, such as water and lighting service, which could be operated without burden to the taxpayers and upon a self-sustaining or even profitable basis. The extension of this amendment to the smaller cities would do away with the resort to such expensive makeshifts as "water districts," under separate corporate organization and responsibility, when necessary to provide a public service and to maintain at the same time the fiction of keeping within the constitutional debt limit.

Both of these questions concerned certain localities in the state more than others, and this was especially true of the third proposal, upon which the smallest total vote was cast.

Question No. 4, unlike the other three questions, was not a proposal to amend the constitution, but "an act to provide for the nomination of candidates of political parties by primary elections," whereby "all nominations of candidates for any state or county office, including United States senator, member of congress and member of the state legislature, shall hereafter be made at and by primary elections held in accordance with the provisions of this act." The vote on this act was: Yes, 65,810; No, 21,774.

The history of this measure, which is popularly known as the "Davies Law," is briefly as follows: The agitation for a direct primaries law began in 1908, with the organization of a Direct Primaries League. In 1910, the democratic state convention inserted a plank in its platform in favor of direct primaries. This was followed a month later by the insertion of a similar plank in the platform of the republican party. In the governor's message, which was read at the opening of the legislative session of 1911, a direct primaries' law was recommended and outlined; and in accordance therewith, a bill was drafted by Nathan Clifford, president of

the senate, and William M. Pennell, of Portland, and referred to the judiciary committee. This bill, popularly known as the "Pennell Law,"¹² provided for the adoption of the direct primaries, limiting them to the selection of candidates for the governorship, for membership in congress, and the expression of a preference for United States senator; the feeling being that it would be better first to try this new and experimental legislation upon the larger offices, in which the interest of the electorate is more widespread. Many of the best features of this measure were taken from a caucus bill offered in the legislature of 1907, by Elwin Gleason, a representative from Mexico. Mr. Howard Davies, a republican and a representative from Portland, also introduced a direct primaries bill which included, in addition to the above, all candidates for state and county offices; and this was likewise referred to the judiciary committee. The judiciary committee reported as follows: Three of its ten members favored no legislation; two, the Davies bill, and five, the Pennell bill; and the house rejected the Davies bill, 76 to 15, and adopted the Pennell bill by a vote of 75 to 20, an action which the senate concurred in without debate or division.

In the summer of 1910, Mr. Davies invoked the initiative on behalf of his measure, and with the aid of the Direct Primaries League, secured the twelve thousand petitioners required by the law. The act was then submitted by the governor to the people in September, 1911, carried by the large vote indicated above, and immediately took the place in the statutes of the Pennell law, which did not live long enough for a test at the polls.

This is the only instance thus far of the use of the initiative, and the law which it has introduced was tested for the first time in the primary elections held on Monday, June 17, 1912.

The Davies law, like the Wisconsin law, provides that nominations for all offices, including candidacy for the United States senate, must be made by the filing of nomination papers by the candidate, signed by one per cent of the voters in the electoral district for which he is a candidate. This percentage is based on the last gubernatorial vote. Such nomination papers must be filed with the secretary of state by the first Monday in May, and the elections are held biennially on the third Monday in June. The law further provides for the holding of state conventions prior to the election for the purpose of

¹² See *Public Laws of Maine*, ch. 199.

framing a party platform and selecting committees; and in this respect differs from the Wisconsin law, where the candidates meet after their primary and formulate their platforms and select their campaign committees.

The first primary election ever held in Maine occurred on June 17, 1912, and drew out a very light vote throughout the state. The principal contests centered about the republican candidates for United States senator and governor, and there were three candidates in each instance; and yet lack of popular interest in the primary is reflected in the fact that in Waterville, the home of the leading republican candidate for governor, the vote was 429, scarcely one-half of the normal republican vote of the city, and this ratio is sustained in other electoral districts throughout the state. Experience will doubtless lead to further modification and revision of the present primary law, notwithstanding the care with which it was framed,¹³ and it may prove advisable to adopt Wisconsin's remedy of providing for majority nominations by requiring a second election, when necessary to stimulate greater interest in the primaries and do away with a choice of candidates determined merely by a minority or plurality vote.

While the above include all the cases of the use of the new referendum law up to the present time, several other measures have recently been passed by the legislature of Maine, that are traceable to the sentiment for direct legislation and political devices to increase the responsibility of the electorate. These include "The Corrupt Practices Act," enacted and approved March 29, 1911,¹⁴ and "An act to provide for the use of uniform ballot boxes and for the preservation of ballots cast at elections," which was enacted at the special legislative session of 1912, and approved March 23, 1912. The first of these statutes is really supplementary to the direct primary law and extends the safeguards of that act to regular elections. It prohibits all election expenditures, save those made by an authorized "treasurer or political agent," defined in the act, but permits a candidate to "pay his own expenses for postage, telegrams, tele-

¹³ The primaries law, in the preparation of which Mr. Davies had the assistance of Mr. Herbert M. Heath, of Augusta, and others, is elaborately and carefully drawn and covers seventeen printed pages. It contains minute provisions concerning the preparation of ballots, the enrolment of voters, the handling of the returns, the correction of errors; and compels all candidates to make full return of their campaign expenditures, and imposes limitations upon the amount that may be expended and penalties for violations of these provisions.

¹⁴ *Acts and Resolves of Legislature*, ch. 122.

phones, stationery, printing, express, and traveling." It defines and limits the purposes for which expenditures may be made by the "treasurer or political agent," and requires him to file within fifteen days after the election, an "itemized sworn statement" with the secretary of state, or other proper officer named in the act, of all moneys received and expended. The same requirement is imposed upon every candidate for public office, with a heavy fine for non-compliance; and an elaborate definition of what constitutes corrupt practices at elections, with the penalties involved and the methods of instituting procedure to determine guilt, are described in sections 11 and 12. If a candidate be found guilty, the election is also declared void, the governor must issue a writ for a new election, and the guilty candidate is rendered ineligible for any public office for the term of four years. The second act provides for the use of uniform state ballot boxes in all polling places, and the transmitting of the returns within three days of all ballots by the town clerks to the secretary of state, who is instructed to preserve them for a period of six months. Proper provision is made for the correction of errors in the returns. The new feature of the act is the provision for the return of all ballots to the secretary of state's office, instead of leaving them in the care of the various town clerks, scattered over the state, as formerly, and is an improvement over the old law. The ballot box act is a democratic measure, however, and there are indications now that the republican state committee intends to invoke the referendum against it.

A bill providing for the recall of all holders of public office in the state was presented in the legislature of 1911, by Mr. Howard Davies, of Portland, but there was so little interest in the measure, that it was not pressed.

It is too early yet to determine what the effect of the referendum law may be, and whether or not the experience of Maine will be similar to that of other states that have adopted the principle of direct legislation. The people of Maine are by nature conservative, and have not as yet made undue haste in using the new legislative instrument. They look upon the law as a safeguard against ill-advised and corrupt legislation, as a check upon the lobby and the power of the old-time political boss, and regard the negative and potential effects of the law and the weapon which it places in the hands of the people to be used when needed against undesir-

able legislation and bills drawn in the interest of corporations and at the expense of the people, as among the most beneficial features of the act.

Already there are indications that the law will be more frequently used in the future, and that it will be increasingly difficult to secure results through the legislature alone. It is uphill work at best to get things done by a legislature, and the burden falls upon a comparatively small group of aggressive leaders. The legislator is timid in the face of the threat of the referendum, and will prefer to shift the responsibility to the people, or he will be indifferent to the fate of legislation, or careless in its preparation, contenting himself with the thought that the electorate will take care of it. A large part of such legislation is too technical, too detailed, or too local, or too remote in its effect, for the average voter to give it any thought or concern.

To the extent that it is used negatively or as a safeguard, as in the case of the town of York, above referred to, to that extent it may prove a useful adjunct to legislative procedure. If used otherwise, it may produce confusion, instability, and other legislative ills, such as now threaten the people of Oregon.

THE WISCONSIN PLAN FOR THE INITIATIVE AND REFERENDUM

BY S. GALE LOWRIE, PH.D.,
Of the Wisconsin State Board of Public Affairs.

The history of American political institutions shows no more remarkable development than the extension of the movement for direct legislation. The close of the nineteenth century saw but one state whose basic law provided means of statutory enactment or even of constitutional amendment by direct vote of the people. The referendum was looked upon as a foreign institution and reports of its operation in Switzerland suggested its infrequent use, and then with no flattering results. Public opinion since then has moved apace. Scarcely a year has passed without marking the accession of some state to the referendum list until nearly half of our commonwealths have accepted this method of state-wide legislation or have started proceedings to amend their constitutions to bring about this end. Hardly a fourth of our states remain among those denying its use even to cities and other minor civic divisions. No longer may the initiative and referendum be regarded as fads, they are burning political issues and have already come to exert no inconsiderable influence in even our national campaigns. The closest students of our political institutions recognize in them elements of strength, and attention is now being directed toward their better development that they may form rational components of our political organization.

The causes which have given rise to this extraordinary movement, involving fundamental changes in our plan of government, merit consideration. They are based upon a distrust of the legislature as an institution for the enactment of statute law. That our representative bodies have proved weak instruments for the work for which they were designed, is not questioned. The plan upon which they have been organized seems admirable—that the people's representatives should gather each year or two and make such laws as in their judgment the condition of the state demands. Coming from all portions of the state and from diverse walks in life, they might be presumed to know the actual needs of the state and to be in a position

to foretell what effect proposed laws would have on their respective constituents and *en bloc* upon the general welfare of the state. Such is the plan of "representative government" which many fear is seriously menaced by the extension of the initiative and referendum. Had the actual development of our plan of government followed the course outlined by its founders, there would have been little demand for a more popular participation in law making. But in nearly all stages of its work the legislative plan has revealed serious weaknesses. In the election of representatives the strongest and ablest men of the community have not been selected, and the business of the session has become so onerous as to make adequate consideration of measures almost impossible. It has become a popular impression that private, rather than public motives frequently influence the position of the people's representatives, and that votes are determined with a view to the furtherance of private corporate and financial interests rather than the interests of the state as a whole. Dissatisfaction with the legislative product has led to a popular distrust of the law-making bodies and a consequent movement for curtailing their power. This was first evidenced in the extended scope of state constitutions which limited more and more closely the power of the people's representatives until, in some few instances, scarcely enough power was left for performing their most elementary functions. The increase in constitutional provisions has, through the power of statutory interpretation, transferred in no inconsiderable degree this strength to the judiciary. The restriction of legislative functions has not been confined to constitutional limitations, but has found expression in an extraordinary demand for popular participation in law making.

The plan for the initiative and referendum is almost ideal in the simplicity of its design. The electorate is looked upon as comprising the members of a great assemblage. Whatever laws are thought advisable are proposed by a given proportion of the community and presented at the election in the form of bills on suggested constitutional changes. If the people adopt these proposals by their vote they become laws of the state, otherwise they fail. Similarly a statute enacted by the legislature may be proposed for rejection by a prescribed percentage of the people and its ultimate fate is determined by their vote. This plan is well calculated to prevent the evil at which it is aimed. Corruption of the legislature receives

little encouragement when laws passed through the legislature with considerable effort and expense may be annulled by an adverse vote of the people.

It is not contemplated that the initiative and referendum will to any considerable extent perform the functions of the legislature. They are looked upon as corrective devices to be invoked when the legislature fails to heed popular demands. The most usual form, however, provides for their use as entirely separate institutions. While their advocates see in them means of legislative improvement, the initiative is entirely independent of the representative body. Reform is effected through the power of removing inducements for legislative manipulation by providing for the rejection of unpopular measures or the passage by a plebiscite of better laws. There are, however, a number of steps which have come to be looked upon as essential elements in the construction of adequate statute law, for which the initiative as it has existed, makes no provision. The drafting of legislative measures is a complicated project not only as respects the technique of the bill itself, but more particularly with reference to its subject matter. The first of these essentials has received too little consideration both with respect to measures to be presented to the legislature and those for a referendum vote. Considerable progress has been made in recent years in the betterment of the arrangement of our statutes. Official bill-drafting departments, patterned after the English prototype, have been installed in a number of our state legislatures and will undoubtedly soon be provided for congressional use. Legislative rules have prescribed with increasing minuteness the form bills must take, and measurable progress has been made in the development of the science of formulating statutes in such a way that the ideas of those proposing measures may be couched in clear and precise language, expressing in no uncertain terms the real concept of its originators. Constitutional provisions must be carefully regarded in order to provide as little ground as possible for litigation and for judicial construction. That these features may not accompany the initiative method of proposing statutes, no one will long contend. There is no reason why the services of the state bill-drafting department might not be at the disposal of those with projects to present, and the rules and customs which are enforced by the legislature might be observed by the initiators. The plan of the direct initiative does not, however, require

this course and those proposing bills to the voters are not as a rule so experienced in bill drafting and in formulating their projects as are the members of the legislature, nor are the voters so well qualified by experience to pass on the measures submitted as are the legislators. To be sure this position is not conceded by all. The picture of the conscious voter studiously devouring the official text-book and the discussions which should fill the public press, arguing the issues with his neighbor or debating them in the local schoolhouse is shown as representing the modern type of lawmaker. In a contrasting position is seen the careless Solon voting in rapid succession, in the closing days of a hilarious session, upon measures he has scarcely even read. That both pictures are overdrawn need hardly be suggested. It is well known that electors cannot be relied upon to give full consideration to proposals upon which they must vote and that the judgment of the major portion is formulated upon a hasty and uncritical reading of the bill itself. This has had an influence upon bill drafting which might easily have been anticipated. Measures are often couched in terms which will curry popular favor and the real purport of the bill is sometimes hidden in portions of the measure where the casual glance will not reveal it. The tendency to confusion in statutory construction with the vastly increased danger of placing upon the courts increased legislative functions is perhaps as reprehensible as the open deceit upon which the practice is based.

But it is to the content rather than the form of the bills that more serious criticism should be directed. It should be the purpose of legislation to meet the needs of the state in the most adequate fashion. How this may be best accomplished is, of course, a matter upon which opinions will differ greatly, but in order to take advantage of such discussion as may be aroused, some plan must be devised which will secure as wide criticism of measures as is possible and which will admit of amendments to the original project in order to improve obvious weaknesses. Opportunity for such procedure is afforded by the legislative committee hearing where measures are attacked by both the friends and enemies of the project. The criticisms of the latter are as a rule the more valuable and such weaknesses as the hearings disclose may then receive consideration. Should the objections prove fundamental, no further course on the measure should be attempted. If but merely incidental, the bill should be so amended as to include proper changes. With

the exception of the Wisconsin plan, this has not been a feature of any initiative project yet proposed. The usual form of the initiative provides no opportunity for changes from the time the petition is filed until the final vote. Even where the plan contemplates the measures going first to the legislature for approval no provision is made for amendments, but should weaknesses be revealed the legislature is allowed the empty privilege of incorporating such changes in a separate bill which is sent to the electorate in competition with the initiated project. True, conscious and commendable efforts have been made in direct legislation states to lessen these difficulties. Bills are referred to friends of the project and the benefit of their criticism is sought. In some instances bills have been published and submitted to various authorities throughout the country for criticism. This is a valuable custom and has been followed with profit in states with the referendum and in other states as well. It does not, however, provide the direct criticism, especially from its foes, which the committee plan supplies. The plan is submitted at too early a time, concrete projects are not yet presented those opposed to the measure are either not consulted or show the matter but indifferent attention. Its final shape is given by a few whose convictions have long ago been formulated and who weigh the adverse criticisms with no judicial mind. From the time the first initiative signatures are secured until the final vote, not the slightest change is admissible. The original concept of the referendum differed widely from this. Rittenhausen proposed popular gatherings for the discussion of all details of measures with an opportunity to reject unpopular sections before the final vote.

The advocates of the direct initiative submit that its true function is to act as an emergency measure, a reference of matters upon which fairly concrete opinions have been formulated, that its use would be confined to measures of greater import and that other matters might well be cared for through legislative channels. Upon such a plan only can the referendum be expected to operate with any satisfaction. The people are not to be bothered with countless proposals of minor importance with which they have no immediate concern. Only important measures can command sufficient attention to reach an intelligent vote. But is it only for measures of minor consequence that the initiative in this form is competent to act. More important and far-reaching measures demand a careful study

and construction for which this method of law-making affords no facilities. Nor has its use been confined in actual practice to the larger measures. Local and minor bills have been referred to the people with the result that more important issues have been clouded.

The difficulty with respect to the use of the initiative and referendum has been that too much has been expected of them and too little care has been directed toward so fitting them into our political system that our institutions as a whole will form a harmonious plan. It was an attempt to adapt the initiative to the task for which it was designed and to make it conform to our present political structures, to improve the institutions now existing, and at the same time to secure the obvious merits of this device which led to the formulation of the Wisconsin plan. The primary design of the initiative is to provide a means whereby the people may vote on measures which the legislature refuses to sanction. While it is the avowed plan of the advocates of the direct initiative that it shall be used only upon the failure of the legislature to act, yet its usual form gives that body no opportunity to sanction the proposals. The bill goes directly from the initiators to the people. The modification of the Swiss plan provided for in Maine obviates this difficulty by providing that proposals must be first submitted to the legislature and are to be referred to the people only upon failure to secure action through this channel. This is a great improvement over the direct initiative inasmuch as it places to the advantage of the initiated project all the legislative devices in the way of hearings, discussion and publicity which attend other bills. Its weakness lies in the fact that little opportunity is here afforded for taking advantage of criticisms which appear upon legislative consideration. The initiative bill is unamendable and the only way provided for securing desired changes lies in their incorporation in a bill of legislative origin. The people are then called upon to decide between the measures submitted to them—a task frequently too difficult for them to handle with the information at their disposal and the time they are willing to devote to it.

The Wisconsin plan, quoted in full in the appended note,¹ requires

¹ Joint Resolution to amend section 1, of article IV of the constitution, to give the people the power to propose laws and to enact or reject the same at the polls, and to approve or reject at the polls any act of the legislature; and to create section 3, of article XII of the constitution, providing for the submission of amendments to the constitution upon the petition of the people.

Resolved by the Assembly, the Senate concurring, That section 1, of article IV of the constitution, be amended to read:

SECTION 1. 1. The legislative power shall be vested in a senate and assembly, but the people

no petition to present measures to the legislature. Bills may be submitted for consideration by any member in the way now provided, and this right is protected in the proposed amendment. Thus all the machinery and procedure now provided for the consideration

reserve to themselves power, as herein provided, to propose laws and to enact or reject the same at the polls, independent of the legislature, and to approve or reject at the polls any law or any part of any law enacted by the legislature. The limitations expressed in the constitution on the power of the legislature to enact laws, shall be deemed limitations on the power of the people to enact laws.

2. a. *Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house of which he is a member, in open session, at any time during any session of the legislature, any bill or any amendment to any such bill; provided, that the time for so introducing a bill may be limited by rule to not less than thirty legislative days.*

b. *The chief clerk shall make a record of such bill and every amendment offered thereto and have the same printed.*

3. *A proposed law shall be recited in full in the petition, and shall consist of a bill which has been introduced in the legislature during the first thirty legislative days of the session, as so introduced; or, at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the legislature. Such bill and amendments shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed law shall be submitted to a vote of the people, and shall become a law if it is approved by a majority of the electors voting thereon, and shall take effect and be in force from and after thirty days after the election at which it is approved.*

4. a. *No law enacted by the legislature, except an emergency law, shall take effect before ninety days after its passage and publication. If within said ninety days there shall have been filed a petition to submit to a vote of the people such law or any part thereof, such law or such part thereof shall not take effect until thirty days after its approval by a majority of the qualified electors voting thereon.*

b. *An emergency law shall remain in force, notwithstanding such petition, but shall stand repealed thirty days after being rejected by a majority of the qualified electors voting thereon.*

c. *An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays. No law making any appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in case of other laws, and such increase, or any part thereof specified in the petition, may be referred to a vote of the people upon petition.*

5. *If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people.*

6. *The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a measure to the people when signed by eight per cent of the qualified electors calculated upon the whole number of votes cast for governor at the last preceding election, of whom not more than one-half shall be residents of any one county.*

7. *The vote upon measures referred to the people shall be taken at the next election occurring not less than four months after the filing of the petition, and held generally throughout the state pursuant to law or specially called by the governor.*

8. *The legislature shall provide for furnishing electors the text of all measures to be voted upon by the people.*

9. *Except that measures specifically affecting a subdivision of the state may be submitted to the people of that subdivision, the legislature shall submit measures to the people only as required by the constitution.*

Be it further resolved by the assembly, the senate concurring, That article XII of the constitution, be amended by creating a new section to read:

Section 3. 1. a. *Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house in which he is a member, in open session, at any time during any session of the legislature, any proposed amendment to the constitution or any amendment to any such*

of measures are available for those which may be later subjected to popular vote. Amendments may be suggested and voted on and the advantages now given legislative proposals are ready for use. Should the legislature enact a measure which is generally satisfactory, no further action of course is necessary. Should it refuse to do so, however, or should a law be passed in an unsatisfactory form, a petition may be filed in the usual way asking that any specified bill which has been presented to the legislature be referred to the people together with any amendments to it which have been proposed in the legislature. Just as the referendum provides a means whereby unpopular laws may be rejected by a plebiscite, so the initiative in this form provides opportunity for affirmative action when the representative body has failed to voice the people's will.

Under the rules of the Wisconsin legislature, this body never loses control over measures which have been introduced. Bills are referred to committees which are expected to examine the proposals and are required to report them back for action. Thus every

proposed amendment to the constitution; provided, that the time for so introducing a proposed amendment to the constitution may be limited by rule to not less than thirty legislative days.

b. The chief clerk shall make a record of such proposed amendments to the constitution and any amendment thereto and have the same printed.

2. Any proposed amendment to the constitution shall be recited in full in the petition and shall consist of an amendment which has been introduced in the legislature during the first thirty legislative days, as so introduced, or, at the option of the petitioners, there may be incorporated therein any amendment or amendments thereto introduced in the legislature. Such amendment to the constitution and amendments thereto shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed amendment shall be submitted to the people.

3. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a proposed amendment to the constitution to the people when signed by ten per cent of the qualified electors, calculated upon the whole number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

4. Any proposed amendment or amendments to this constitution, agreed to by a majority of the members elected to each of the two houses of the legislature, shall be entered on their journals with the yeas and nays taken thereon, and be submitted to the people by the secretary of state upon petition filed with him signed by five per cent of the qualified electors, calculated upon the whole number of votes cast for governor at the last preceding election of whom not more than one-half shall be residents of any one county.

5. The legislature shall provide for furnishing the electors the text of all amendments to the constitution to be voted upon by the people.

6. If the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution, from and after the election at which approved; provided, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

7. If proposed amendments to the constitution which conflict with each other in any of their essential provisions are submitted at the same election, only the proposed amendment receiving the highest number of votes shall become a part of the constitution. (Joint Resolution, 'No. 74, Laws of Wisconsin, p. 1142.)

proposal receives definite approval or rejection at the hands of the legislature itself. No bill may die in committee. It may be that a single committee report recommends the indefinite postponement of a large number of bills which are killed by the acceptance of the report, but opportunity is always given for separate action on measures when a special vote is requested. So the committee performs the function for which it was designed, investigating measures more minutely and carefully than the legislative body itself finds possible, but never depriving the houses themselves of full control over all projects of legislation. Much has been said in disparagement of our American committee system because of the abuses which have too frequently attended it, but no one has seriously contemplated its abolition, because without it parliamentary procedure would soon become clogged. But the committee is no more essential to the legislature in its law-making function than is the legislature to the people. In fact, there is a close analogy between the two, and the legislature may well be looked upon under the Wisconsin system as the people's committee for law-making. To them all projects are referred for analysis and examination and the people have means at their disposal for as complete control over the legislature as that body has over its own committees. Should the legislature enact a measure of which the people disapprove, a referendum petition will present it for rejection at the polls, but on the other hand, any measure which the legislature has refused to pass may, by the filing of a similar petition, be placed upon the ballot for the people's approval either in the form in which it was originally introduced or with such amendments submitted during its legislative consideration as the petitioners designate.

A similar course is provided for constitutional amendments except that a larger petition is required to effect their submission. The regular method of constitutional amendment in Wisconsin involves the approval of two successive legislatures and the subsequent ratification by the people. Should the legislature refuse approval to any constitutional amendment submitted, a ten per cent petition will bring it before the people with any designated amendments which were introduced in the legislature. After an amendment has passed one legislature a five per cent petition will be as effective as the approval of the second legislature to place it on the ballot.

With respect to the referendum, certain new features are to be found which have since been incorporated in later proposals. The general effect of the referendum petition upon a legislative act is to suspend its operation until sanctioned by a popular vote. The possible inconvenience and danger which might result from any delay attendant upon the immediate operation of some emergency measure has resulted in the almost universal provision that such laws should go into immediate operation and subsequent rejection at the polls should act as a repeal. It is customary to require a larger vote in the legislature to stamp a law as an emergency measure. To this usual provision the Wisconsin amendment adds appropriation laws. To quote the amendment: "No law making an appropriation for maintaining the state government or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in the case of other laws, and such increase, or any part thereof, specified in the petition may be referred to a vote of the people upon petition."

Appropriation measures are not of a character to be satisfactorily carried to a large constituency. The need of funds for public purposes may be demonstrated to a group or to those who can be induced to seriously consider such questions, but it is difficult to secure increased taxes from the people for projects from which no immediate financial benefit is assured. But other considerations make such a plan as this imperative. The referendum petition delays the taking effect of a law until the popular vote—sometimes eighteen months in the future. To allow a handful of the people to withhold funds for a needed government service for such a time is an obnoxious form of minority control. The Wisconsin plan, therefore, makes possible a referendum on increases in appropriations or new charges, but allows the conduct of government to proceed uninterrupted. Wisconsin will thus be saved serious inconvenience which has elsewhere accompanied the use of this agency. But the power of the people is not limited even with respect to old appropriations. Funds may be cut off entirely from any state service or institution by a law enacted by the people through initiative petition.

The plan as outlined has not as yet become a part of the Wisconsin constitution. It has been accepted by one legislature and yet requires sanction at the next session and subsequent ratification

at the polls. It has not received the unqualified endorsement of the leaders of the direct legislation movement throughout the country. We have been told that this is not the initiative at all but merely a development of the referendum to make it apply to bills as well as laws—to give a positive as well as a negative force. Possibly this is true, but names are not important, and if there is here found an instrument which accomplishes the same results it matters little what title is given it. More consequential objections come from those who see in it a limitation on the popular control of law-making which the more usual form provides. They reason that the basic principle of direct legislation is to act as a check on the legislature, to reject vicious laws and enact those which the law-makers refuse to pass. To place this instrument in the hands of those whom we wish to regulate is looked upon as fatal. But wherein lies the danger? What could the most recalcitrant legislature do with respect to a measure which they might bitterly oppose to thwart the wishes of the people of the state? Might they forbid the introduction of bills on matters which they opposed? The amendment provides that any member may present any bill, or any amendment to such bill, at any time during the first thirty days of a session. Would the members be so enleagued against the plan that none could be found to father it? Slight chance would there be for the passage of a law by the people were it impossible to find even one legislator who would consent to present it "on request."

But a more fundamental query is raised by the objection that the introduction of measures into the legislature does not assure them the careful consideration which the advocates of this method deem essential. Attention is called to the multitude of proposals and the limited time of the sessions, and the conclusion is suggested that the limitation of the initiative to measures which have been introduced will not insure any careful consideration of measures upon which the people will be asked to pass. Such criticism misses the element which forms the greatest contribution of the Wisconsin plan. The initiative will not be called upon when legislative action may be secured, the latter is the quicker, less expensive and easier way. Attention will therefore be closely drawn to those measures in the session upon which a later vote may be requested. Those of sufficient interest to make possible their later submission will be carefully scrutinized and each representative will be prepared to defend his vote upon it before his constituents. In practice it may well be expected to be confined to

measures upon which some state-wide interest has been aroused. Platform pledges, administration measures and issues supported by various organizations of the state will constitute the issues. It is not to be expected that the initiative will be frequently invoked, but the possibility of its employment will exert a wholesome influence upon the legislative product. True, there are many bills presented each session, but those of such importance as to make the use of the initiative at all possible are not numerous and, with a later campaign contemplated, the advantage of publicity and discussion while the bill was pending before the legislature would hardly be overlooked.

They are undiscerning students of political science who argue there is no demand for direct legislation. The rapid rise and spread which has attended this movement would not have resulted unless directed against real evils in our governmental organisms. That such exist none will deny. The question is whether direct legislation provides the surest remedy. There must be popular control of our political institutions in all their forms, and only such laws should be enacted as meet with public approval. It is to the legislature that we must look primarily for statutory enactment. Should it fail to embody in the form of law, principles demanded by the people, resort may be had to the initiative. Whether or not laws may be satisfactorily secured through the direct vote of the people depends upon the importance of the issues, their number and the popular interest which they arouse. Like every other group, the electors must be organized for concerted action, but upon clear-cut issues, where public opinion has been focused, the ballot-box may well be looked to for a final determination. To deny its use would be irrational, to abuse it, unwise. The initiative is to be so adjusted to our organizations as to form with the legislature a proper method of statutory enactment. For this purpose the Wisconsin plan seems well adapted. Here is a method through which the people by their own power may pass laws or constitutional amendments which have been proposed in the legislature and which the legislature has refused to sanction. Its greatest value will lie in the improvement it may be expected to exert upon that body through this potential. By the adoption of this amendment it is believed the direct legislation principle has been well adapted to continue the course which the State of Wisconsin has so successfully pursued—the development of strong and effective institutions of government subject to the control of the popular will.

THE INITIATIVE AND REFERENDUM AMENDMENTS IN THE PROPOSED OHIO CONSTITUTION

BY ROBERT CROSSER,

Chairman of the Committee on The Initiative and Referendum.

The Ohio Constitutional Convention, which finished its labors on June 7, 1912, has provided, among other things, for the submission to the voters of an amendment to the constitution establishing the initiative and referendum as a part of the fundamental law of the state. In the campaign of 1911 for the election of delegates to the constitutional convention, the chief issue was the initiative and referendum, and the result of the November election showed a clear majority in favor of the proposition. The victory seemed so decisive that one of the most prominent initiative and referendum men of the state declared at a public meeting that there would not be enough opposition in the convention to make an interesting fight. The writer, who had "fathered" a municipal initiative and referendum bill in the seventy-ninth general assembly, had had some unpleasant experiences with certain avowed initiative and referendum members, and was, therefore, not so much inclined to enthuse at the prospects in the constitutional convention as the gentleman who had expressed himself so confidently. Events proved the latter's confidence unwarranted.

When the convention organized I was made chairman of the initiative and referendum committee, and introduced in the convention the proposal upon the initiative and referendum. I was, therefore, in a position to learn very early in the session that, while there are many who avow themselves to be believers in the initiative and referendum, there are not so many who are enthusiastic about it. Finding it practically impossible to make any valid objection to the principle of the initiative and referendum, the opposition endeavored to make it difficult for the people to make use of the initiative and referendum if adopted.

I shall here briefly state the more important provisions of the proposal as originally drafted, also the chief feature of the amend-

ment as finally passed by the convention, and shall state as fairly as possible the arguments made for and against the change.

The proposal, as originally introduced, provided that if at any time, not less than ninety days prior to any regular election, a petition signed by eighty thousand electors proposing an amendment to the constitution, should be filed with the secretary of state, the proposed amendment must be submitted at the next regular election by the secretary of state to the electors for their approval or rejection. In like manner a petition signed by sixty thousand electors, proposing a law, if filed with the secretary of state not later than ninety days before any annual election, would require the submission of such proposed law at such election by the secretary of state to the electors for their approval or rejection.

The referendum section of the proposal provided, with certain exceptions to be noted later, that no law passed by the general assembly should go into effect until the expiration of ninety days after the final adjournment of the session of the general assembly which passed the same. If a petition signed by fifty thousand electors of the state were filed with the secretary of state within ninety days after the final adjournment of the session of the general assembly which passed any law, ordering that such law or any item, section or part of such law be submitted to the voters of the state for their approval or rejection, it then became the duty of the secretary of state to submit such law or item, section or part of such law to the electors of the state for their approval or rejection at the next annual election, and it would not go into effect unless approved by a majority of those voting on the same. The filing of a referendum petition against any item, section or part of any law would not, however, prevent or delay the remainder from going into effect.

According to the original proposal, certain acts would go into immediate effect, should the same receive a vote of three-fourths of all the members elected to each branch of the general assembly. These were acts providing for tax levies, appropriations for the current expenses of the state, and other emergency measures necessary for the immediate preservation of the public peace, health or safety. Nevertheless, a referendum petition might be filed upon any such emergency law in the same manner as upon other laws, but such law would remain in effect until the same had been voted upon, and, if it were then rejected by a majority of those voting

upon the same, it would cease to be law. The amendment as passed by the convention does not permit a referendum upon this class of laws.

The original draft provided that the initiative and referendum powers were reserved to the electors of each political subdivision of the state, to be exercised in the manner to be provided by law. As finally passed by the convention, the only political subdivisions specifically given these powers are municipalities.

The general provisions of the proposal, as originally presented by me to the convention for discussion, are practically identical with the general provisions of the amendment as finally adopted by the convention. We shall, therefore, postpone their consideration, and now discuss the material changes made by the convention as evidenced by the amendment finally adopted.

First of all, a majority of the convention determined to change from the plan requiring a "fixed" number of signatures to initiative and referendum petitions, the majority deciding that a percentage basis was proper and desirable. Several delegates, including the writer, earnestly advocated the fixed number plan as being the only sound one, and here, trivial as this difference may seem, was the first occasion for a violent controversy. We argued that, since the representative system of government proceeds upon the theory that the people are the principals and act through their representatives as agents, then, logically, the principals should be able to do at least all that their agents could do; that, approximately, each eight thousand electors are now entitled to one member in the general assembly, who can introduce bills, that is to say, can initiate legislation at his will. As the population of the state has increased the membership of the general assembly has increased, but the number of persons required to elect one member of the general assembly has not been increased. Why, therefore, should it be necessary to automatically increase the number of signatures necessary upon a petition to initiate legislation directly, since, regardless of the increase in population or number of voters, any member of the general assembly, as agent for the same number of electors as before the population increased, could by introducing a bill or bills, initiate legislation and occupy the time of all the other representatives of the people, discussing and voting upon the same.

The next change was to fix the percentage so as to increase

the number of signatures over that required by the proposal as introduced. At the last general election there were about one million two hundred thousand votes cast, and, as the amendment finally submitted requires ten per centum to propose an amendment to the constitution, this would mean one hundred and twenty thousand signatures, as compared with eighty thousand—the fixed number specified in the original proposal to submit proposed amendments to the constitution.

The amendment, as passed by the convention, does not provide at all for the direct form of the initiative as to laws, although the direct initiative is provided for constitutional amendments. By direct initiative we mean that form of initiative by which a law is proposed by a certain number of petitioners and is submitted directly to the voters. The amendment as adopted provides that when, at any time not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors, proposing a law (the full text of which is set forth in such petition), the secretary of state shall transmit the same to the general assembly as soon as it convenes. If the general assembly passes the law, either as petitioned for or in an amended form, it shall be subject to the referendum in the same manner as any other law passed by the general assembly. If the general assembly refuses to pass the proposed law as petitioned for, or if it passes the same in an amended form, or fails to take action upon the same within four months after receiving it, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by a supplementary petition signed by not less than three per centum of the electors in addition to and other than those signing the original petition; but such supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly, or within ninety days after the expiration of four months from the time of its presentation to the general assembly, if no action shall have been taken thereon, or within ninety days after the law as passed in amended form by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall

be either as first petitioned for, or with any amendment or amendments which may have been incorporated therein by either branch or both branches of the general assembly. If such proposed law thus submitted is approved by a majority of the electors voting thereon, it shall become the law and shall go into effect in lieu of any amended form of said law which may have been passed by the general assembly; and such amended form of the proposed law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors.

The bitterest contest relating to the initiative and referendum waged upon the question as to whether or not we should adopt the direct or indirect form of initiative. The more radical members of the convention struggled determinedly for the direct form of initiative. The newer converts to the doctrine of the initiative and referendum, and those who had accepted the doctrine but were not enthusiastic about it, supported the indirect form of initiative. The advocates of the direct form of initiative insisted that, while they did not desire, as claimed by the opposition, to abolish the representative form of government, yet, nevertheless, when it becomes necessary for the people themselves to propose legislation by petition, they should not be under obligation to either impliedly or expressly implore their servants to give their masters, the sovereign people, what they, as representatives, had no right to withhold. The opposition answered that this argument was based largely upon the sentiment that it was contrary to the spirit of democracy. This is no doubt partly true, but we also urged several additional reasons against the so-called indirect form of initiative.

First of all, it would delay action by the people on a proposed law—in some cases as long as two and a half years. For example: Suppose that, at the conclusion of the next session of the general assembly (which generally adjourns about the first or fifteenth of April), a situation should arise which would cause the required number of electors to sign and file a petition proposing a law. Of course, this proposed law could not be submitted at the November election in 1913 because it had not first been presented to the legislature, nor could it be submitted at the November election in 1914, for the general assembly is not ordinarily in session in the even-numbered years. The proposed law would be presented, how-

ever, to the general assembly in session on the first Monday in January, 1915, and, if the general assembly failed to pass the same, or should pass it in an amended form, a supplementary petition of three per centum would require its submission at the November election in 1915. This, in certain cases, would be a very serious objection, but there are other objections.

One of the chief arguments advanced for the principle of direct legislation is the educational effect upon the electorate. It is certainly true that the discussion and consideration of a measure by the people would result in a very much more thorough understanding of the law thus submitted to them. This discussion and study of laws or proposed laws submitted to the people for their approval or rejection, naturally creates in men a greater respect for the law. In the first place, men take a certain pride in the fact that they had a direct influence in determining what the law as to that particular matter should be, and, even if they may have been in the minority, they will have a much greater respect for such a law, for the reason that they know that the real majority of the people have declared that to be their will or law. In other words, they know that public sentiment is for it, and there is no suspicion, on the part of the minority, of undue influence, as in the case where important legislation is passed by a legislative body. It has always been urged that this responsibility of the people, and the study and discussion necessary to the discharge of this responsibility, would give such an understanding of the reasons for the law and the justice of it, or what seems to the majority to be justice, that it would thus form the strongest bulwark against anarchy and appeal to passion, for few there are who are willing to rebel against what they know to be the will of the real majority of their neighbors.

The purpose of the indirect form of initiative, however, is to prevent, as far as possible, the submission of proposed measures to the people for their approval or rejection, so that the advocates of this plan are compelled practically to abandon what has always seemed to the writer to be the strongest argument in favor of direct legislation, viz., the educational advantage. We have heard it very logically argued that the only way to learn an art is to practice it; that no one could learn to swim, for example, by having someone else swim for him, and certainly it is true that, in order to learn the art of government, the people must have practice. By this

we do not mean to argue that all laws should be submitted to the people for final approval or rejection, but it is desirable that laws bearing upon great questions of principle should be submitted directly to the voters. In no other way can certain questions ever be settled satisfactorily. The liquor question, for example, is a constant bugaboo to the legislatures of this state, and the will of the real majority of the people has never been expressed upon this question. Members of the general assembly invariably are dominated by either one organization or another, while the public generally always feels that the best judgment of the whole people is not expressed in the form of law. So it is with the question of taxation. The rural delegation in the constitutional convention were almost unanimously for what is known as the uniform rule of taxation, while the urban members generally were for the classification of property for taxation. The discussion of this question resulted in vituperation rather than argument.

The advocates of the indirect form of initiative offered as practically their only argument, the fact that the legislature would be given an opportunity to put the proposed measure in more perfect form. Our answer to this argument was, first, that ninety-nine per centum of the amendments offered to any bill as introduced in the general assembly, were not as to form but to substance, so that the real object of the indirect initiative is to give the legislature an opportunity to materially change the measure. It is reasonable to suppose, also, that persons expending from three to six thousand dollars for the circulation of a petition would, before incurring such expense, procure expert advice upon the subject, and take every other means of satisfying themselves as to the correctness of the form of the measure. Then again, if the members of the legislature are really so much concerned about the proposed law, they could offer their assistance to the framers in bringing the same into proper shape.

But, said the opponents of the direct form of the initiative, the people are required to vote either upon the proposition presented by a certain petition or vote against it. In answer to this we call attention to the fact that other citizens, procuring the required number of signatures, could submit to the voters at the same election, a different measure upon the same subject, so that it is not necessary to vote for or against the one proposition, provided that the objectors are really in earnest about the matter.

Another feature of the amendment as passed by the convention, is that one-half of the counties of the state must furnish the signatures of not less than one-half of the designated percentage of electors of such county upon all initiative and referendum petitions. This provision was also strongly combatted by the more radical initiative and referendum men of the convention. The argument of the supporters of this provision was that without it a few of the big cities could require the submission of proposed laws or amendments to the constitution to the vote of the whole state, to the disadvantage of the rural districts. One of the answers made to this argument was that in making this requirement the rural counties were putting themselves in a position where it would be almost impossible for them to avail themselves of the initiative and referendum. The writer's objection to this provision was that it partially destroys the influence of citizens in large municipalities, in that the signature of a citizen in a large city would have only a fractional value in its relation to the total required number of signatures upon any petition. If the state be the unit for the enactment of laws, then the signature of each citizen should be as effective in making the law as that of any other. It is not required that the County of Cuyahoga, for instance (the largest in the state), should be required to have the names of more than one of its members of the general assembly upon a bill before it would be entitled to consideration by the whole body, yet this provision of the initiative and referendum makes it necessary for a greater proportion of the citizens of the county to sign a petition in order to initiate legislation or demand a referendum. Assuming the soundness of the principle of popular self-government, the opponents of the plan for the distribution of signatures over certain portions of the state are absolutely correct in their contention.

There is no state which has a form of initiative exactly like that adopted by the Ohio Constitutional Convention. The State of California adopted the alternative plan of having both the indirect and direct, requiring a somewhat higher percentage of signatures for the direct than the indirect. The Ohio Constitutional Convention had, on second reading, adopted the California plan of indirect initiative, which provides for the submission of a proposed law to the legislature by petition. The legislature may, under that plan, either pass, reject, or pass the measure in an amended form. If the measure should be passed in an amended form, then the original measure peti-

tioned for, together with the one passed by the legislature, is submitted to a vote of the electors. If the legislature passes no form of the proposed measure, then it must be submitted to the electors as petitioned for. The difficulty with this plan, in the opinion of the convention, is the confusion that would necessarily result from the form of the ballot. Almost invariably it would be necessary to have a ballot permitting an affirmative and negative vote, both on the measure petitioned for and on the one submitted by the legislature, and the result would be that a great many voters in favor of one or the other proposition would vote only for one, while those against the principle would vote against both, thus giving the negative a very decided advantage. The convention, therefore, abandoned the plan on final reading of the proposal, and adopted the form above explained.

The indirect form of initiative adopted by the State of California provides that if the measure submitted to the legislature be passed in any form other than that proposed by the initiative petition, then both the measure in the form passed by the legislature and the measure in the form proposed by initiative petition or, what is denominated in the language of that constitution "Completing measures" shall be submitted to a vote of the people. In such case the ballots must be so printed as to permit an affirmative or negative vote on both forms of the measure. If either measure receives an affirmative majority of the votes cast thereon it shall become the law, provided however, that if both receive an affirmative number of the votes cast thereon then the one receiving the higher number of affirmative votes shall become the law.

The Maine form of initiative is practically identical with that of California. There is, however, this difference. According to the constitution of Maine, when there are competing bills or measures submitted to the people and neither receives an affirmative majority of the votes cast for or against both, the one receiving the greater number of affirmative votes, must at the next general election, held not less than sixty days after the first vote thereon, be submitted to the electors, by itself, if it receives more than one-third of the votes given for and against both of the competing measures at the first election held thereon. It has already been explained that the indirect form of initiative adopted by the Ohio Constitutional Convention provides that in case of the passage of an amended form of the measure

proposed by initiative petition, then the measure as originally proposed by the initiative petition or with any amendment incorporated by either branch of the legislature is submitted to the vote of the electors if demanded by a supplementary petition signed by three per cent of the electors in addition to and other than those signing the original initiative petition and if it receives an affirmative majority of the votes cast thereon it becomes the law and the amended form passed by the legislature becomes void.

One peculiar provision of the Ohio amendment is that the "initiative and referendum shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon, or of authorizing the levy of any single tax on land or land values or land sites, at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property." No other state has such a provision as this in its constitution. It is so ridiculous that it is not necessary to make any argument to show that fact.

The section containing the general provisions is very clear and comprehensive. Initiative or referendum petitions may be filed in parts, but each part must contain a full and correct copy of the title and text of the measure which is to be submitted. Each signer must be an elector of the state and must place after his name his place of residence and date of signing. The names of all signers must be written in ink by the person himself. An affidavit of the person soliciting signatures to any part of a petition must be attached to such part, and such affidavit must contain a statement of the number of signers of such part, and must state that the signatures were made in the presence of the affiant; that, to the best of affiant's knowledge, each signature is genuine, and that the persons who have signed are electors and signed the petition with full knowledge of the contents on the date set opposite the signer's name. A true copy of all laws or proposed laws or amendments to the constitution, together with an argument for and against the same, must be prepared, and must be mailed or otherwise distributed as far as reasonably possible, to each of the electors of the state. The persons who prepare the argument for any law or part of law submitted to the electors by referendum petition, or against any law submitted by supplementary initiative petition, shall be named by the general assembly, if in session, and, if not in session, then by the governor. The persons who

prepare the argument against any law or part of a law submitted to the electors by referendum petition, or for any proposed law, or proposed constitutional amendment submitted by initiative petition, may be named in such referendum or initiative petitions. The arguments in all cases are limited to three hundred words. The secretary of state is required to place upon the ballot the title of any law or proposed law or proposed amendment to the constitution submitted to the voters, and the ballots must be so printed as to permit an affirmative and negative vote upon each law or proposed law or proposed amendment to the constitution submitted to the vote of the electors. The basis upon which the number of petitioners shall be computed shall be the total number of votes cast for the office of governor at the preceding election therefor.

A valuable provision of the amendment is that the petitions and signatures upon all petitions mentioned in the amendment shall be presumed to be in all respects sufficient, unless, not later than forty days before the election, it shall be otherwise proved, and, in such cases, ten additional days shall be allowed for the filing of additional signatures to the petition in question.

Another provision which the writer believes to be extremely desirable, and which is contained in no other amendment, is that no law or amendment to the constitution, submitted to the electors by initiative or supplementary petition, and which receives an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the unsufficiency of the petitions by which such submission was procured, nor that the rejection of any law submitted by referendum petition shall be held invalid for such insufficiency.

Speaking generally, I believe the Ohio amendment relating to the initiative and referendum to be one of the best in the United States, although I feel that it would have been much better to have adopted the direct form of initiative rather than the indirect. It is gratifying to many of the veteran advocates of the initiative and referendum to know that one of the measures which legislatures have constantly refused to enact, and the need of which perhaps had a great deal to do with the agitation for the initiative and referendum, has been passed by the constitutional convention. This is the municipal home rule amendment. It is true that the legislature had not the power to give the cities as wide a scope of home rule as is provided

by the constitutional amendment just submitted by the convention, but, nevertheless, the general assembly always had it in its power to grant a great deal of relief in that direction.

The deliberations of the convention also converted a number of men who had hitherto violently opposed the initiative and referendum, among these some of the most ardent advocates of the reform known in Ohio as "classification of property for taxation." Some of these taxation reformers have seen the futility of any attempt to procure the desired end in any legislative body where necessarily there are so many conflicting interests which prevent the enactment of such legislation.

SOME CONSIDERATIONS UPON THE STATE-WIDE INITIATIVE AND REFERENDUM

BY W. F. DODD,
University of Illinois.

Professor Beard has well said that a system of initiative and referendum can be intelligently discussed only with reference to the concrete forms in which it appears. Upon this question as elsewhere much of the discussion is fruitless because it does not take into account the varying aspects of the institutions under consideration. The purpose of this paper is very largely to consider the main objections to the initiative and referendum, and the extent to which these new instruments of democracy may be wisely employed under our system of government.

In the operation of the initiative and referendum there are three fundamental steps: (1) The drafting of the measure to be submitted; (2) the obtaining of initiative or referendum petitions, and (3) the submission of measures to a vote of the people. It will be well to discuss each of these steps separately.

The question of draftsmanship has been one of the most serious ones in connection with the initiative. Perhaps too much emphasis has been placed upon the value of discussion in legislative bodies, for we realize that the great bulk of our state legislation does not receive careful consideration by the bodies which enact it. It is true also that important measures are frequently drafted by individuals or organizations which have no official connection with legislative bodies. But legislative discussion is of much value, and one of the most hopeful movements in recent years has been that toward scientific draftsmanship of legislation. Any plan which will enable a small group of persons to force action by the voters upon legislative proposals, no matter how crudely drafted, is defective just to that extent. To this point it is not sufficient to answer that much legislation now enacted by legislative bodies is bad, and that the more important initiative measures in Oregon and elsewhere have been drafted with some degree of care. There must, in addition, be some guarantee that initiative measures shall receive serious consideration,

both as to form and as to substance, before being submitted to a popular vote.

But it seems possible that expert draftsmanship may be obtained under the initiative. It would not be improper, for example, to require that initiative petitioners obtain the services of some competent draftsman if they have not voluntarily done so. It is with respect to the subject of obtaining proper consideration of a measure before its submission to the people that the framers of initiative proposals in this country have made important advances. There are many possible ways of initiating proposed legislation. In the Swiss federal government a proposed constitutional amendment may, if it is desired, be presented in general terms, leaving the federal assembly to draw up a project in accordance with the sense of the petitioners; but this plan has not proven popular in Switzerland, and would put power in the hands of a legislature to defeat the popular demand by drafting a measure not in accordance therewith. Moreover, the proposers prefer definite measures to a general statement of principles.

The most popular plan of initiative in this country, and the one first adopted, was that of a popular initiation of a complete measure, usually by a petition of eight per cent of the legal voters, the initiated measure to be submitted directly to the people as a result of such initiation.¹ The next development in the form of proposing initiated measures is that of requiring such measures to be submitted first to the state legislature, with that body having an opportunity to enact the measure if it thinks proper, and if it does not think proper to do this, to submit to the voters a competing measure² upon the same subject, at the same time that the initiated measure is submitted. This plan, adopted in Maine, California and Michigan (under an advisory initiative for constitutional amendments), and proposed in Nevada, Washington and North Dakota, is open to the very serious objection that it complicates the issue submitted to the people. Under this plan some legislative action is forced, of course, and the competing measure has the advantage of legislative consideration, but the advantages of the plan are more than off-set by its disadvantages.

From the standpoint of proper draftsmanship and consideration

¹ The South Dakota amendment of 1898 required the legislature to enact such initiated measure and submit it to a vote of the electors of the state.

² In Maine apparently the legislature may submit the initiated measure merely with a recommendation that it be rejected.

before submission to the people, the proposals made in Wisconsin, Ohio and Illinois deserve most serious consideration. The Wisconsin proposal,³ which must receive the approval of another legislature and be adopted by the people before it becomes effective, in reality does not provide for a popular initiative. It assumes, properly, that if any appreciable number of the people of the state wish to do so, they may obtain the introduction of their measure in the legislature. A petition of eight per cent of the qualified voters may then require the submission to the people of such a proposed law, either in the form in which it was originally introduced, or with any amendments thereto which may have been proposed in the legislature.

The plan recently proposed by the Ohio constitutional convention is more satisfactory in some respects than is the Wisconsin scheme.⁴ Here a measure may be initiated in the legislature by a petition of three per cent of the electors, and if enacted in the form proposed it becomes effective, subject to a referendum upon petition. If the measure is not passed, or if no action is taken upon it within four months, or if it is passed in an amended form, its submission to the people may be demanded by a supplementary petition of three per cent of the voters (in addition to those signing the original petition), and such petition may demand the submission of the measure, either in its original form or with any amendment or amendments incorporated therein by either branch, or both branches, of the general assembly.

The Illinois plan⁵ provides for initiation of a measure in the legislature by an eight per cent popular petition, and the initiated measure, unless enacted without change, is to be submitted to the people at the next general election, unless it should fail to receive the affirmative votes of at least one-fourth of the members elected to each house. This plan as proposed does not permit an improvement in the form of the initiative measure originally proposed, but permits the killing of any such measure which does not have some substantial support in the legislature, and also permits the legislature, if three-fourths of its members can agree, to enact a measure in place of that initiated, and to avoid a popular submission of the initiated proposal. It is probable that one-fourth of the members of each house could be found

³ Beard and Shultz, *Documents on the State-Wide Initiative, Referendum and Recall*, p. 206.

⁴ Proposed amendment to be submitted to the people of Ohio, September 3, 1912.

⁵ Senate Joint Resolution No. 15. Passed Illinois Senate, April 20, 1911. Failed of necessary two-thirds vote in House of Representatives, May 3, 1911.

to support any meritorious proposal which a majority of such houses desired to defeat.

The Wisconsin and Ohio proposals preserve all the beneficial features of legislative consideration, and in reality give a greater possibility of scientific draftsmanship than do the ordinary processes of legislation. These plans meet one of the most serious objections to the initiative in its earlier form.⁶

With respect to the Wisconsin plan it should be noted again that no initiative petitions are provided for, and where, as in the Wisconsin and Ohio proposals, initiation is in the legislature itself, with a possibility of legislative consideration and amendment, it is not necessary that a large number of petitioners be required to initiate a proposed measure. The framers of the Ohio constitutional amendment, therefore, were wise in providing that three per cent of the voters might initiate a measure.

But conditions are entirely different when a measure presented by initiative petition must be submitted to a popular vote precisely in the form in which it is proposed. Under such conditions as these adequate safeguards should be provided to insure that a petition represents some well-defined sentiment in the state at large. Everyone is familiar with the ease with which signatures are often obtained to petitions, and a large proportion of such signatures usually represent no sentiment on the part of the signers. It is this fact that is responsible for the development of professional "signature-getters" in Oregon.⁷ Yet, with all of this, the getting-up of large petitions is not an easy task, and the greater number of signatures do perhaps represent popular sentiment as definitely as does the subsequent voting upon the measures submitted to the people. It should also be remembered that if an initiative petition be required to be signed by eight per cent of the legal voters, the completion of such a petition

⁶ Under any system of free proposal of measures by initiative petition, for submission to the people, it is possible that two or more measures dealing with the same subject may be proposed, and such measures may be directly contradictory, or merely conflicting in some of their terms. To meet this situation, the California constitutional amendment of 1911 provides that: "If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail." Similar provisions have been adopted by a number of other states. Such a plan as this will probably lead to thoroughly unsatisfactory results, inasmuch as the measure so enacted would represent a composite of provisions, very likely not in harmony, and which in such form would probably not represent the views of the supporters of either measure. But the contingency here provided for is apt not to arise often, and under the Wisconsin and Ohio plans proposals conflicting as to some of their terms are not very apt to be submitted.

⁷ Burton J. Hendrick, "Law-Making by the Voters," *McClure's*, Vol. 37, p. 436 (August, 1911).

is much more difficult and more expensive in a populous state like Illinois, where perhaps one hundred thousand signatures are required, than in Oregon, where ten thousand would be sufficient. Clearly the requirement of twenty-five per cent of the legal voters, as is proposed in Wyoming, is prohibitive, but for states of small population an initiative petition of more than eight per cent is desirable, if the initiated measure is to be submitted to the voters in the form in which initiated by petition. However, under the same conditions, eight per cent should be sufficient in a state as populous as Illinois. In my own opinion the better plan is one somewhat similar to those of Wisconsin and Ohio, with a very small initiative petition if any, but with the initiated measure submitted first to the legislature for consideration.⁸

For the referendum five per cent of the voters have usually been required. Here again the ease or difficulty of obtaining signatures depends in large part upon the number of voters, and while five per cent may not be too small for a populous state, it is perhaps desirable that a larger percentage be required in states of small population.

In order to make sure that the demand for legislation, or the demand for a referendum, is not merely local, there should be some provision which will prevent all signatures to a petition being obtained in some one section of the state. Such a requirement adds to the difficulty of getting up a petition, but should not be a serious burden, if properly devised. The Missouri constitutional requirement that an initiative petition be signed by eight per cent, and a referendum petition by five per cent, of the legal voters in each of at least two-thirds of the congressional districts of the state, is clearly too severe a restriction, but no objection can be made to the Wisconsin proposal that no more than one-half of the petitioners shall be residents of any one county.

Another question of great importance is that as to the verification of initiative and referendum petitions. An official verification of each signature, such as might be provided if signatures were required to be had at registration places, would make it necessary that the voter come to the petition, and would make it almost impossible to complete a petition, although every signature under such conditions would be fairly sure to represent the real opinion of the signer.

⁸ Upon the subject of the size of petitions there are interesting discussions in *Equity*, XIII, 65; XIV, 18 (April, 1911; January, 1912).

The Michigan constitution of 1908 provides that advisory initiative petitions on constitutional amendments "shall be signed at the regular registration or election places at a regular registration or election under the supervision of the officials thereof, who shall verify the genuineness of the signatures and certify the fact that the signers are registered electors of the respective townships and cities in which they reside."⁹

The plan most employed in this country is that merely of a certification by the person circulating the petition, but this has come to be regarded as insufficient, and several states now by legislation provide in addition for a judicial determination of the sufficiency of a petition. The Wyoming proposal makes the requirement that to each petition "shall be attached affidavits by three separate qualified electors that each signature thereon is the signature of the person whose name it purports to be, and that to the best of the knowledge and belief of the affiant each of the persons signing said petition so verified, was, at the time of signing, a qualified elector."¹⁰ The Montana legal provision that the registration officers shall compare the signatures upon the petitions with the signatures upon the registration books, is a good one,¹¹ as is also the California constitutional provision limiting the circulation of petitions to persons who are qualified electors of the city or county in which the signatures are obtained.¹²

The most important step in the initiative and referendum is the submission of the proposal to a vote of the people. And here attention should be called first of all to the desirability of submitting to popular vote only important questions of state policy. With respect to these institutions the most important point is that of devising some plan which will not burden the voter with a number of unessential and unimportant measures. Upon our success in this respect depends the ultimate usefulness of the referendum as an instrument of democratic government.

The policy of submitting state constitutional amendments to a vote of the people was adopted early in our history, and although the initiative and referendum for ordinary legislation have been adopted in a number of states, constitutional amendments still form the larger

⁹ Michigan constitution of 1908, Art. xvii, Sec. 2.

¹⁰ Beard and Shultz, 204.

¹¹ *Ibid.*, 131.

¹² *Ibid.*, 189.

bulk of measures submitted to popular vote. But calling a measure a constitutional amendment does not make it any the more important, and attention has frequently been called to the fact that the greater number of such proposals are really not fundamental in character.¹³ The distinction in substance between constitutional provisions and statutes has largely broken down, and we have come to realize that many matters of statutory law are of more fundamental importance than is much of our constitutional legislation. Whether they be called statutes or constitutional amendments, only questions of state-wide importance should be submitted to a vote of the people of a state. Perhaps one desirable step in this direction would be to provide that constitutional amendments as to trivial matters need not be submitted to the people, unless such submission is demanded by a referendum petition.

Any specific limitation upon the number or character of measures of legislation submitted through the initiative and referendum must almost necessarily weaken these institutions as means of obtaining desired legislation.¹⁴ But with plans such as those proposed in Wisconsin and Ohio, especially if combined with a requirement that any measure to be adopted shall receive say at least one-third of all votes cast in a general election, there is little danger of the voters being swamped by a great number of proposals.

A popular vote is of little value (1) if the questions submitted are so trivial or so local in character as not to be of interest to those to

¹³ See my *Revision and Amendment of State Constitutions*, 269-271.

¹⁴ There are, however, certain ways in which proper limits may be placed upon the submission of measures to the people. If the people by petition have the right to demand a referendum upon legislative acts, there is no reason why the legislature should be permitted of its own motion to submit its measures to a popular vote. If there is any demand for such a vote a referendum petition can be presented, and if there is no demand by petition for a referendum the legislature is simply shifting its responsibility for the measure by submitting it to the people; the result is harmful and the ballot is overburdened. Yet many of the initiative and referendum provisions permit such a practice.

The Nevada constitutional amendment of 1904 forbids the repeal or alteration of a referendum law except by another vote of the people. If measures adopted by a popular referendum may be repealed only in the same manner the number of proposals to be voted upon by the people must necessarily in the long run be materially increased, and such a requirement seems unnecessary. The requirement of a two-thirds vote of the legislature to repeal or alter a referendum law should be sufficient. For provisions in California and Washington (proposed) bearing upon this subject, see Beard and Shultz, 188, 193.

When a measure has been initiated by petition and rejected by a popular vote, it should not be possible to submit the same measure at the succeeding election. In Oregon the question of woman's suffrage was rejected in 1900, 1906, and 1908, but was submitted again in 1910. Oklahoma and Nebraska (proposed) provisions limit the power to resubmit questions at succeeding elections. Beard and Shultz, 139, 197. There is a more stringent proposal in North Dakota with respect to initiated constitutional amendments, *Ibid.*, 218.

whom they are submitted, (2) if the questions are so complicated and technical that the average voter has no satisfactory means of informing himself regarding them, or (3) if the questions are submitted in such great numbers that the voter, even if he might possibly render a satisfactory judgment upon any one of them, cannot inform himself regarding the merits of all the measures upon which he must pass.

It has already been suggested that many constitutional amendments submitted to the voters are local or trivial, and the same statement may be made of many legislative measures submitted through the initiative and referendum. But in general the legislative proposals so submitted have related to matters of general interest.

Most of our constitutions provide that a bill shall relate only to one subject, which shall be expressed in its title, and this places some limitation upon the complexity of legislative measures submitted to the people. But where the subject matter itself is technical or complex the voter is apt to be perplexed, and may receive little aid in deciding properly the question submitted to him. The voter is almost sure to have difficulties under the plan adopted in some states by which a measure may be initiated by petition and by which the legislature, if it disapproves of such measure, may submit a competing measure. The Michigan constitution contains such a plan with respect to constitutional amendments initiated by popular petition and provides that: "In case alternative proposed amendments on the same subject are submitted at the same election, the vote shall be for one of such alternatives or against such proposed amendments as a whole," and there is a somewhat similar provision in Maine with respect to legislative measures. This presents three alternatives to the voter, and makes it possible that neither proposal receive a vote sufficient to carry it, although the total affirmative vote for one or the other of the measures may be greater than the vote against both. To cover this case the Michigan constitution further provides: "If the total affirmative vote for such alternative proposed amendments is the required majority of all the votes for and against them, but no one proposed amendment receives such a majority then the proposed amendment which received the largest number of affirmative votes shall be submitted at the next regular election, and if it then receives the required majority of all the votes cast thereon it shall become a part of the constitution." There is

a somewhat similar provision in Maine. All provisions for competing or alternative proposals must necessarily be somewhat complex. The voter can with some intelligence answer yes or no upon one definite and concrete question, but few have the time and patience to deal successfully with two competing measures upon the same subject. And this difficulty alone is sufficient to condemn the plan of competing proposals.

Where proposals are complex some aid is of course furnished by the printed arguments which are distributed in Oregon, Oklahoma, California and Montana.¹⁵ But under the Oregon plan, which has proven most effective, some measures always remain unargued, and the official arguments prepared in Oklahoma cannot have proven of much value to the voters. Upon the constitutional amendments submitted to the voters of California on October 10, 1911, some of the arguments were very well prepared, but their usefulness was diminished by the cumbersome form in which they were printed.

The Oregon plan of distributing printed arguments has pointed the way to a more effective method of educating the voter upon questions to be submitted to him, but such arguments will not prove effective if the measures submitted are numerous or technical. In Oregon the people have taken a great interest in questions submitted to them, even when so large a number as thirty-two measures were submitted at one time, but a large number of the measures submitted in Oregon since 1904 were important, the plan of submitting arguments (in 1906, 1908 and 1910) was a novel one, and the whole movement has not passed a somewhat experimental stage. It is hardly wise to assume that the great body of the voters of a state will continue to feel themselves competent to pass upon as many as thirty-two measures at each succeeding biennial election.

In the submission of measures to a popular vote much depends upon the ballot title, for an erroneous title may mislead voters into supporting something to which they are in reality opposed. In Oregon, Oklahoma and Missouri it is made the duty of the state attorney-general to provide a proper ballot title for a measure to be submitted to a referendum vote, and an appeal to the courts is allowed if anyone is dissatisfied with the title selected by that officer.¹⁶ Yet those favoring a general woman's suffrage amendment succeeded in

¹⁵ A similar plan is proposed in Washington and Ohio.

¹⁶ Beard and Shultz, 86, 145, 174.

having it go on the Oregon ballot in 1910 as a "woman's tax-paying suffrage amendment, granting to taxpayers, regardless of sex, the right of suffrage." The voters were not misled, however, and defeated the proposal by a heavy vote.¹⁷

For some years we have been in the midst of a vigorous movement for a short ballot, and this movement has been founded on the well-known fact that if a great many officers are to be elected the voter cannot possibly vote with intelligence, because he cannot know the qualifications of all candidates who present themselves for office. The same statement holds when numerous measures are submitted to a popular vote. Each voter can be expected to have some intelligent notion regarding important public questions, but must necessarily be perplexed by a great number of measures, regarding some of which he may be almost completely ignorant.

Much is made by the opponents of the referendum of the fact that a great many measures are voted upon unintelligently and are carried by small minorities of the whole electorate. It can hardly be expected that even important measures will ordinarily obtain as high a vote as that cast for candidates in the same election. But if a measure is important enough to be submitted to the people, it should be possible to get a vote large enough to represent a real popular judgment. And in fact it should be said that important measures of state-wide interest do ordinarily receive such a vote.

It is not necessary that such a popular judgment be represented by a majority of all persons voting at a general election or by a majority of all the electors of the state. Indeed, such requirements are practically prohibitive, because of the fact already referred to that a larger vote can ordinarily be gotten for candidates than for measures. This is natural, not only because of the greater personal interest in candidates, but also because the machinery of our party organization is devised primarily for the purpose of polling a full party vote upon candidates. Measures submitted to the people are ordinarily not political issues between the parties.

However, some constitutional provision should be adopted to make sure that a referendum vote does represent a real popular judgment. The requirement of a majority of all votes cast at a general election is too severe. The requirement simply of a majority of those voting upon a given measure permits its adoption by a small minority

¹⁷ Burton J. Hendrick in *McClure's*, Vol. 37, p. 442 (August, 1911).

of the voters and is therefore bad. The Michigan constitution of 1908 provided that a constitutional amendment initiated by popular petition in order to be adopted should receive a majority of the votes cast upon its adoption or rejection, and that the affirmative vote should not be less than one-third of the highest number of votes cast at the same election for any office. Similar plans have been proposed in Washington and Wyoming;¹⁸ and in New Mexico a legislative act submitted to the referendum is not rejected unless forty per cent of those voting at the election cast their ballots against it.¹⁹ Some such scheme as that adopted in Michigan seems not unreasonable for measures initiated by popular petition. The popular vote required for the adoption of such proposals determining, as it does to a large extent, the ease or difficulty of carrying a measure, has a reflex influence upon the number of measures proposed, for measures merely of local interest will not be proposed if the possibility of their adoption is slight.

Much of the voting upon measures is mechanical, especially when a number of propositions are submitted at the same time, but a similar mechanical type of voting goes on also with respect to candidates. Perhaps the most interesting illustration of mechanical voting is that furnished by the use of distinct ballots for the submission of measures to a popular vote. When measures to be voted upon are printed upon the official ballot, together with and after the names of candidates, they are overlooked by many voters. Where a separate ballot is employed for such questions the attention of the voters is attracted to a much greater extent. This fact is clearly brought out by the experience of Idaho. In the elections of 1900 1902 and 1904, proposed constitutional amendments were printed at the bottom of the official ballots where they were easily overlooked. In 1906 and 1908 proposed amendments were printed upon separate ballots, copies of which were handed to each elector; having the ballot in his hand the elector is apt to vote it, and the result is a larger vote upon measures. By this mechanical device Idaho almost doubled the proportion of the popular vote upon proposed constitutional amendments. The adoption of a separate ballot law by Illinois in 1899 raised the popular vote upon measures from twenty to fifty per cent of the vote cast in the elections.²⁰

¹⁸ Beard and Shultz, 194, 203.

¹⁹ *Ibid.*, 235.

²⁰ C. O. Gardner, "Working of the State-Wide Referendum in Illinois," *American Political Science Review*, August, 1911.

Votes obtained in this manner are not entirely unintelligent, because the voter, when his attention is attracted, may have a basis for intelligent action. But certainly the voting is more or less mechanical, and many of the votes are simply meaningless counters, just as are many votes cast upon measures under the Nebraska plan by which straight party votes are cast for or against proposed constitutional amendments endorsed or opposed by the parties.

Another illustration of popular inertia and of mechanical voting is that presented by the fact that when several proposals are submitted to the people at the same time, a popular proposal will aid others submitted with it, and an unpopular proposal will have the opposite effect. There are a number of cases in which an unpopular measure has carried down to defeat other measures which, had they been submitted separately, would have been carried.²¹ In many cases however, perhaps in the greater number of cases, the people have shown discrimination in voting when several measures have been submitted to them at the same time.

A most pernicious practice employed by those interested in defeating a particular measure is that of organizing a campaign to defeat all proposals submitted at the same time, it being easier to develop in many voters an indiscriminating opposition to all measures than to make a fight on the particular proposal opposed and on that alone. Then, too, the ballots of ignorant voters can be controlled more easily by such a plan. Of twelve measures submitted to the voters of South Dakota in 1910 all but one were defeated as a result of a general "vote no" campaign, and of nine constitutional amendments submitted in Missouri in the same year all were defeated in a similar manner. In these cases proposals to restrict the liquor traffic were responsible for the defeat of other measures.

Yet non-discriminating and mechanical voting is characteristic of all elections, whether on men or on measures, and institutions must be judged not alone by the defects which manifest themselves, but by the general results obtained through their operation. And the experience in this country with the initiative and referendum seems to indicate that we need these institutions as a part of our governmental machinery. Most of the arguments against the initiative and referendum are either arguments against some particular form in which they have been applied or against their too frequent

²¹ See my *Revision and Amendment of State Constitutions*, 280-284.

use. Carefully devised plans, such perhaps as those of Wisconsin and Ohio, are not open to serious objection, and to argue that they bring about any fundamental change in our form of government is mere nonsense. Even in the form most open to criticism, as in Oregon, the initiative and referendum have proved themselves effective instruments for the maintenance of popular government. As to Oregon, it should be said in addition that the people have largely met any difficulties which may be presented by an unlimited initiative and referendum—they have developed the system of bringing arguments upon measures home to every voter, and have shown an intelligent and sustained interest in the questions presented to them. And the initiative and referendum are largely responsible for this reawakening of political interest on the part of the people of Oregon.

The initiative and referendum do not constitute a panacea for all our political ills. They are not of value as instruments for the enactment of all state legislation, or for the enactment of any great part of such legislation. They are of value as a means of forcing legislation which the people want, and of checking the action of the regular legislative bodies. Real popular control consists not in the people's passing upon every public question, but in their having power to pass upon every question upon which popular interest is sufficient to warrant such action.

THE RECALL—ITS PROVISIONS AND SIGNIFICANCE

BY H. S. GILBERTSON,

Assistant Secretary of The Short Ballot Organization, New York.

A decade of exposure in the field of American politics brought forth some ugly and insistent facts. In Grover Cleveland's phrase, it is now a condition, not a theory, which confronts the reformers, the builders, those who are seeking to construct anew the foundations of democracy, or representative government, or call it whatever you will. These men have an eye for the effectiveness of their weapons and rather less for tradition or fine logic. No wonder, then, that some institutions appear in the catalogue of remedies which seem ill-harmonized with politics of the text-books.

The recall is one of these practical instruments, and whether we like it or not, it is an emphatic protest against some of our long-standing legal and political traditions. It is radical, revolutionary, in one view, and yet in another it has a certain conservatism of its own, though relying upon an entirely different set of forces from the legal processes which it partially supplements, to prevent abuses. In order, then, to analyze it adequately, this article must treat it both from the practical and the theoretical standpoint.

The Growth of the Idea

For the first legal enactment of the recall principle we are indebted to the charter of Los Angeles, which contained the provisions first in 1903. During the next four years a number of other California cities adopted the idea. In 1906 it was incorporated into the charter of Seattle, Wash. Soon also the initiative and referendum advocates of Oregon became interested in it as a supplement to their own "People's Power" measures, and by employing the initiative, they succeeded in getting it inserted in their constitution in 1908, where it was made applicable to all elective officers, local and general, including the judiciary. It may then be said to be one of the peculiar contributions of the Pacific coast to the present movement, a movement that looks toward a more direct participation of the rank and file of the people in affairs of government.

But the circumstance which gave to the recall its greatest vogue was its incorporation in the commission government laws of Iowa, and almost simultaneously into those of South Dakota and Dallas, Tex. This was in 1907, and ever since it has shared in the publicity which has attended the spread of that form of government. It is, however, not an essential part of the commission plan, and this the Galveston people would have us at all times to understand. But so closely are the two ideas associated that the recall is now a part of every state-wide commission government law, except those of Utah and Kentucky, and of fully three-fourths of the special charters. The relative simplicity of this form has also made the recall a far more feasible and logical adjunct than is perhaps the case with our typical forms of state and local government. For, where, as under the "commission" scheme all the elective officers are directly concerned with public policy, the individual citizen has every reason to concern himself with their official conduct. Moreover, responsibility for the acts of government is so much more definitely fixed that action under the recall is more apt to be well-aimed and effective. And again, the persistent demand for "checks" in our political thinking finds some satisfaction in the recall, when, as under the commission plan, the theory of the separation of powers has been cast aside for a system in which the unity of the organization is bound up in the single group of elective officials.

As a proposition applicable to state officers, it has a slower road to travel. Following the example of Oregon, the nascent State of Arizona sought to make it a part of her system, without taking the precaution of excepting the judiciary. The veto of this measure in its original form and its repassage so as to exclude the judiciary from the recall provisions are a matter of common knowledge and can receive only passing mention here. But the California constitution, by amendment adopted October 10, 1911, permits the recall of all elective officers including judges. Idaho and Nevada will vote in 1912 on similar amendments.

The application of the recall to state officers in its earlier days faced a possible constitutional obstacle in the obligation imposed upon the states to maintain a republican form of government. This difficulty was finally cleared up by the supreme court in the case of *The Pacific States Telephone Company v. The State of Oregon* (223 U. S. 118) wherein it was decided that all questions as to the

form of state government are political and not judicial and lie outside the jurisdiction of the courts.

In the absence of any judicial definition of republican government it is impossible, of course, to determine whether or not the recall is inconsistent with it, and until congress intervenes, the recall is good political practice.

Founded on the Right of Petition

The recall has something more than a mere experimental foundation. As in the case of many another chance creation of politics, it turns out that its fashioners, unconsciously perhaps, have built upon a solid basis of thoroughly accepted political principles which are a vital part of our American political system. And of these principles the first is the well-grounded right of petition, which is one of the chief pillars of our national bill of rights. In the historic sense, this right, to be sure, is limited, and so far as direct remedies are concerned, impotent. The recall amplifies it and makes it dynamic by supplementary provisions. Petitions, thereby, are taken out of the category of publicity schemes, as they were, for instance, when John Quincy Adams was forcing his colleagues in congress into the open on the slavery issue. They are expanded into political instruments capable of producing direct and certain results. They set up a remedy in addition to a right, for under the recall a body of electors may not only express their disapproval of the public course of an officer, but they may carry out their disapproval directly to the point of removal through the mandatory provisions of the law.

In this process the state is more than a passive partner. It goes more than half way to facilitate the exercise of this new right, by becoming accessory in several district processes:

The law supplies the blank forms of petition and requires them to be certified against fraudulent signature.

The law requires a ministerial officer to examine into and certify the sufficiency of the petition to the officer or body authorized to call elections.

The law requires the officer or body in charge of elections to submit the subject matter of the petition to an election, to the voters, and to take all the incidental steps in this action and to incur the attendant expenses.

The law puts into effect, automatically, the mandate of the voters.

Political Character of the Recall

But what of the nature of the petition? Herein is the key to a new conception of elective public office in that a new basis of tenure, short of a fixed term, is set up, a tenure not dependent upon judicial, but upon political considerations. For though elective public office in this country has never been considered in terms of property or contract, there has been heretofore a fixed tradition that removal should be accomplished only by legal formula which may be termed "due process of law." This means the establishment of cause for removal, due notice and a hearing upon charges. Often in practice, the observance of this formula is formal and perfunctory, but the fictions of the law at least are followed.

The recall laws change all this by providing specifically that the subject matter of the petition may be couched in most general terms, for the information of the signers only.¹ It is not to be taken as a series of formal charges. And if this fact in itself is not enough to preclude attacks on the validity of the petition on technical legal grounds, the laws especially provide that this general statement shall not be subject to review in any case. The only "due process" is a political one.

Nor has the political nature of the recall been overlooked in actual practice. In none of the cases in which it has been invoked does there appear to have been any effort to bring to light the definite evidence of malfeasance under the statutory definitions, which would support legal indictment. If such evidence existed in the mayoralty cases in Los Angeles and Seattle, no effort was made to formulate it. And in all the others the action for removal was put entirely upon grounds of public expediency. Thus, in Dallas, in the elections of 1910 and 1911, in each of which two of the school directors were removed, the question at issue was the dismissal of certain teachers. In Tacoma it was that of generally inefficient and inharmonious administration. During the past winter an effort was made in Berkeley, Cal., to remove three school directors on the sole ground that they had dispensed with the services of the superintendent of schools. In Huron, S. D., the removal of the commissioner was sought on the

¹ The charter of Oakland, Cal., has what is perhaps a more equitable provision in this connection, from the standpoint of the officer involved. Under this law the originators of the petition must, before circulating it, give notice of their intention to do so, by filing with the city clerk the reasons for their action. The officer sought to be removed is then allowed to place upon the petition a statement in defense of his course in office.

ground of increase in the tax levy. In the more or less confused contest which took place in Wichita, Kan., the difficulty seems to have been mainly over the submission of a proposition to purchase a public utility plant. Similar issues of policy seem to have underlain the movements which were instituted in San Bernardino, Cal., and in McAlester, Okla., and Shreveport, La.

Recognition of Minorities

The right of petition is essentially a haven for minorities. There is no minority too small to make itself heard in this way. But once the petition becomes a self-executing instrument, as under the recall system, a question arises as to how large a minority need be to gain the official recognition which will set the machinery of removal to work. Practically, the question may be put in this way: When is a petition serious enough to justify the call for a popular election?

To this question, if the recall is to become a permanent feature of our institutions, a good deal of careful consideration must be given. The interest of the people is not only in making public officers responsive to its genuine wishes, but in accomplishing this result with the least possible friction, both to the officers and to the electorate. In making this adjustment the private interests of the officer as such, sink into insignificance. Whatever protection of tenure he gets is incidental to "the larger good." This is the philosophy of the "new democracy" in which the recall is so important an element.

The actual application of the recall principle appears to have reflected a social psychology which makes the adjustment between the interests of the whole people and the demands of the minority, on the basis of local conditions. The importance of the petition is usually measured by the ratio of the number of its signers to the whole number of votes cast in the constituency at the last preceding general election, or the total number cast for the officer in question. When, as in Oregon, California and South Dakota, the socializing influence in politics is noticeably strong, the doubt has been resolved in favor of the whole people. This means a low requirement in the percentage of petitioners. On the other hand, such communities as Illinois, in which a recognition of the recall principle has been wrung from a reluctant legislature, the percentage is prohibitively high. A general average of all the laws would place the percentage

somewhere near twenty-five.² Such a figure is not prohibitive and in all the communities in which the recall has been brought to the point of the election, a twenty-five per cent petition has been indicative of a very real public sentiment. In a number of the commission government cities which have this percentage, abortive efforts to remove officers have made their appearance only to be proved ridiculous.³ Politicians have freely asserted that the recall is a two-edged sword, quite as effective in the hands of unscrupulous trouble-making office hunters as in those of public-spirited citizens. They have worked on this theory in some cases, and with little encouragement, as in the attempt made in Tacoma during the past year to oust the mayor, who had himself been chosen in a removal election. It is the writer's belief, also, that public officers will shortly cease to feel, if they do feel, any insecurity in their positions from the mere fact that a political enemy is seeking to use this public instrument for private ends. Twenty-five per cent petitions are not always easy to secure, even when signatures are purchased, unless the cause is one in which the voters generally take a rather keen interest.

The Expression of Majority Opinion

The placing of a completed petition in the hands of the city clerk or a like officer, fastens upon him the purely ministerial duty of determining, within ten days, its sufficiency, and of certifying the fact to the officer or board empowered to call elections. But during this period every opportunity must be given the signers to put their

²Twelve per cent for state officers in California, with special restrictions.

Fifteen per cent under the commission government laws of South Dakota and under the special charters of Oakland, Modesto, Vallejo and Santa Cruz, California.

Twenty per cent under commission government laws of Washington, and the special charters of Grand Junction, Colo., Mankato, Minn., Pontiac, Mich., Fort Worth (registered voters) and Denison, Tex., Parkersburg, W. Va., and Stockton, Cal., Wyandotte, Mich., and Lowell, Mass.

Twenty-five per cent under commission government laws of Montana, Wyoming, New Jersey, Kansas and the special charters of San Luis Obispo and Eureka, Cal., Bartlesville and McAlester, Sapulpa, Okla., and Austin, Tex., Lawrence and Haverhill, Mass., Gardiner, Maine.

Thirty per cent in Ardmore and Enid, Okla., Colorado Springs, Col., and under the Nebraska commission government laws.

Thirty-three per cent under the commission government law of Louisiana.

Thirty-three and one-third per cent under the Wisconsin commission government law, and the special charter of Corpus Christi, Tex.

Thirty-five per cent in Dallas, Tex., Oklahoma City and Tulsa, Okla., Wilmington, N. C., and general commission government law of Idaho.

Forty per cent under the special charters of Holdenville, Okla., and Knoxville, Tenn.

Fifty-five per cent under commission government law of Illinois.

³Instances of this character have taken place in Colorado Springs, Des Moines, Haverhill, Tacoma and Seattle.

petition in proper form, and the insufficiency of one petition does not preclude the right to present another.

The functions of the election-calling officer or board are likewise ministerial. If a special election is necessary, as is usually the case, the necessary funds must be appropriated⁴ and an election called for a date within the period fixed by law.

In this way the mechanism has been developed to the point where it involves a general popular expression, which it has been the ideal of the recall laws, apparently, never to stifle, but always to facilitate.

But the recall is by no means a broad concession to the revolutionary or "adventurous" elements of the people. Against fictitious expressions of opinion or ill-considered action the laws make a very definite provision. For at the point where the procedure brings the whole electorate for final discussion is placed a barrier against anything like popular passion. This consists of the simple but effective element of time. Every recall law provides that, subsequent to the completion of the petition and before the calling of an election, there must elapse a goodly period of time. This is never shorter than twenty nor longer than ninety days. In this way the recall legislation undertakes in advance to take care of the mob, and its characteristic impulsiveness. Wherever the recall has been invoked, this period has been employed in active and thorough public discussion.

Can a community be maintained at a high pitch of anger, enthusiasm or interest to the detriment of a public officer for a period ranging anywhere between three weeks and three months? Possibly. But, at least, the laws have not neglected this factor. If the official conduct of an officer is sufficient to interest a respectable percentage of the voting community for such a period, the question of his removal by that fact alone, would seem to be a matter of serious public policy. Publicity to the last degree is a well accepted specific for political ills under a democracy. The recall laws make ample provision for this.

This brings us to the manner of removal in the last instance.

The rough analogy between the various stages of the recall processes to "due process" of law under the older forms of removal

⁴ The Oregon law requires that the expense of a second election for the recall of the same officer shall be borne by the petitioners, who are required to deposit the necessary amount in advance.

breaks down completely when we consider the manner in which the proposition is placed before the jury of the people on the election ballot.

For at this stage the whole matter is not, as a rule, put up to the voter as a simple, unmixed issue of removal as against removal.⁵ It is the question of retaining the incumbent in office or electing a successor. When the process of petitioning is over the officer under attack is given an option between resigning and becoming a candidate for the job of filling his own office for the remainder of his unexpired term. He is, in fact, such a candidate and his name is placed upon the ballot, unless he expresses a wish to the contrary. The petitioners who often, as a matter of practice, constitute a more or less distinct faction, or temporary party, proceed to nominate an opponent by petition.

Upon the ballot, provision is usually made for a statement of the reasons for the sought-for removal, and the counter statement of the officer, justifying his course in office. These recitals, as in the original petitions, because of their brief and general character may take on a decided political color.

As to the sufficiency of the final verdict of the electorate, most of the laws require that the successful candidate shall receive a majority of all votes cast; the remainder stipulate the highest number of votes after the practice of regular elections. In either case the number may be considerably less than was required for choice at the original regular election, for of the laws in effect, none thus far fixes a minimum number of votes to establish the validity of a removal election.

Such, in general, is the groundwork of recall legislation. Minor features have been added from time to time to some of the laws. One of these protects the officer for a given period from recall, after the beginning of his term of office. In most cities this is from three to six months. Under the New Jersey commission government law it is one year, the whole term of office being four years in this case.

By charter amendment in 1911 the city of Los Angeles has extended the recall to all appointive officers. This is a step which suggests a series of very debatable questions from the standpoint

⁵ There are exceptions to this rule however. Under the charters of Austin, Tex., and those of Sacramento and Modesto, Ca., the question of removal is presented as an entirely separate one from the election of a successor. The Los Angeles Charter Revision Committee contemplates a similar change.

of responsibility which cannot be dealt with here. The new commission government law for Mississippi has a like provision. The new charter of Lawton, Okla., attempts to meet the objections to irresponsible petition-peddling by requiring every signer to appear in person at the city hall when affixing his signature.

An important variation from the typical plan outlined above is found in the Boston charter, adopted in 1909. This is based upon a rather different theory of official tenure. Under this act the mayor is elected for a term of office of four years, unless recalled at the end of the second year. No petition is necessary to submit the proposition to the voters; it is put in the ballot as a matter of course. Unless the mayor is recalled by an advance majority vote, he becomes by tacit consent of the electors, as it were, his own successor. But the Boston arrangement is not only a variation from the general plan in form. It fails to provide the machinery for continuous control by the electors, which is the very essence of the recall principle.

Wider Significance of the Recall

So much for the mere machinery of this new political instrument. There are those who speak of it as a "device" or a "nostrum," implying that it is but an ingenious invention of more or less unbalanced revolutionists. They speak of it as an agency for undermining and destroying our existing system of government. Perhaps, in a measure these critics are right. Certainly its underlying political philosophy points to a radically new conception of the ends of democratic government, as compared with the philosophy underlying our jurisprudence. The acceptance of the recall principle implies a complete revamping of the theory of public office tenure. The new system of laws has socialized, within their limitations, our conception of public service. Every other form of removal in American practice lays emphasis on certain colorable rights of the public officer; not the right of property in the office, not the rights of one party to a contract, but a presumption in favor of the officer's title to his position as against the interest of the public in his removal. A public officer once chosen by the people—a political process—has heretofore been from the moment of his election, entrenched behind legal immunities, based upon the theory that removal should be effective for specific cause and only after due notice and an opportunity to be heard in one's own defense. On top of this primary rule was a galaxy

of minor technicalities in procedure. The modern idea favors public interest as against what were supposed to be private rights, and political action as against legal obstacles to action.

This theory, moreover, has been largely borne out in practice. A review of the earlier cases in which the recall has been invoked brings these two conflicting theories into graphic relief. The office holder, just as soon as the recall movement has attained a serious momentum will, almost inevitably, be found resorting to the familiar expedients of the law courts. He has sought to fortify his rights, and he does so, boldly ignoring the real issue, which is the political one. But the spirit, as well as the form of the laws, is against such an attitude of mind, and it seems likely that every doubt as to procedure will be resolved by the courts in the interest of the public as against the so-called rights of the officer. And so, the recall, in a humble way, may be pointing toward a new theory of jurisprudence in which the balance will be in favor of social good as against private rights and immunities.

The successful extension of the recall principle will doubtless depend upon a simplification of present electoral arrangements. And not until this simplification is accomplished; not until a clear distinction is made between merely ministerial and genuinely political, or policy determining officers is made, will the new theory of continuous control be able to work under the most favorable conditions. By the side of the direct legislation movement fortunately goes the movement for the "short ballot," which, if its friends prevail, will result in removing from the voters' direct selection all purely administrative and, in fact, in some cases, judicial officers, and leave on the ballot only those who shall be concerned directly with public policy. It is significant that thus far, the actual operation of the recall has been confined largely to "short ballot" cities.

Likewise, the dominant traditional theory of representation is profoundly disturbed, especially when we take the recall in connection with the initiative and referendum. If we take the view of the framers of the federal constitution, representative government meant the rule of a very superior few, whom the multitude might select, but, who during a fixed term of office, were to be immune from popular attack or control. Legislative bodies, in this spirit, have steadfastly asserted the right to control membership within their body and, by the terms of the written constitution, are traditionally

immune from removal by any outside agency. There has been little to suggest that the great body of the people had any concern in the great business of government except as they may silently cast their ballots for substitutes in the executive and legislative halls, much as one would select a substitute at the battle front.

This conception, too, must continue to operate as the normal condition of representative government. But under a system of which the recall is a part, it must be subject to suspension in matters of great and vital public concern. Against the traditional theory the recall opposes the doctrine and the instrumentalities of direct and continuous control over the agencies of government—control which is seemingly dormant for the greater part of the time, but which is always on call, ready to be brought into action at any moment. To this extent, wherever the new expedient has been adopted, there certainly has been a change in the form and spirit of our government and it is one which is calculated to strike terror in the hearts of every good Tory. But the matter of mere form is of minor importance as compared with the substance of democracy. In fact, it is quite possible to regard the "People's Power" agencies in the light of a fulfilment of a promise of genuine popular rule given by our state and federal constitution, but never realized in the fullest application until now, because of the defectiveness of the instruments which were employed.

THE WORKING OF THE RECALL IN SEATTLE

BY FRED WAYNE CATLETT,
Secretary to the Mayor of Seattle.

Diligent historians may be able to discover that the principle of the recall is not new, but was known and employed centuries ago. For practical purposes, however, it is exact enough to say that the recall is a new political device. As such, it has aroused the interest not only of students of government, but of citizens in all parts of the country. It is the awakened interest of these increasing classes which justifies the present description of this new device at work in Seattle.

Fortunately for the brevity of this discussion, the simplicity of the recall section of the Seattle charter renders an explanation of its provisions comparatively easy. "A petition signed by voters entitled to vote for a successor to the incumbent equal in number to at least twenty-five per centum of the entire vote for all candidates for the office, the incumbent of which is sought to be removed, cast at the last preceding general municipal election, demanding an election of a successor of the person to be removed," must be filed with the city comptroller, who is ex-officio city clerk. The petition must bear "a general statement of the grounds for which removal is sought." "The signatures need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number." "Any person competent to make affidavit may circulate" the petition and "shall make oath before an officer competent to administer oaths that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed." Ten days are allowed the city clerk to "check" the signatures by comparing them with the signatures in the registration books. After the comparison, he must attach a certificate "showing the result of the examination." If this certificate pronounces the petition "insufficient," ten days are allowed for the filing of a supplemental petition. If such a petition is filed, the clerk has ten days more to check it. His certificate then is final. If he declares the petition "insufficient," it is returned to the person filing it "without prejudice to the filing of a new petition."

If, on the contrary, he declares it "sufficient," his certificate to that effect goes to the city council at once, and that body must set the date for the election "not less than thirty days nor more than forty days from the date of the clerk's certificate." The usual election procedure follows. The incumbent's name is printed on the ballot, "unless he requests otherwise in writing," and the candidate receiving the highest number of votes at the election serves out the remainder of the incumbent's term.

The charter scheme, just detailed, showed itself incomplete at the first attempt to make use of it. In this emergency, the state legislature, then in session, was appealed to. It at once passed two acts—one providing a method of nominating opponents of the incumbent by petitions filed ten days before the election, signed by electors equal in number to not less than five per cent of the total vote cast for the incumbent against whom the recall is directed; the other permitting each candidate to appoint challengers for the various precinct polling places, one of whom is entitled to be within the voting place during the whole time the polls are open.

A statement of the bare machinery of the recall conveys, however, no adequate idea of the way it has operated in Seattle upon the two occasions when the law has been invoked. Assume, first, the existence of more or less feeling, either temporary or permanent, impulsive or deep-seated, against the incumbent of an office, and a number of persons for one reason or another moved to take advantage of that feeling. An organization is formed, funds collected, charges formulated, petitions printed, and placed in the hands of solicitors. The charges made are very general accusations of misconduct or maladministration, unsupported by any proof or statement of the evidence upon which the accusations are made. In fact precisely the same charges were made against Mayor George W. Dilling, the "recall mayor," as against Mayor Hiram C. Gill, whom he supplanted, although it was very difficult for the unprejudiced observer to discover any foundation for them without an extraordinary stretch of the imagination.

Below the charges, which head the petition, is the statement that the person signing is a voter entitled to vote for a successor to the incumbent, followed by spaces for from ten to fifty names, with precinct and ward numbers, house numbers and street addresses. At the bottom of each petition is an oath to be signed by the circulator

before a notary public or other person authorized to take oaths, to the effect that the statements made in the petition, viz., that each signer is a voter qualified to vote for a successor to the incumbent, that his or her residence (we have equal suffrage in Washington) is such and such a street and number, are true, and that each signature to the petition is the "genuine signature of the person whose name purports to be thereunto subscribed." Very apparently in a city of 250,000 people a great many, probably the great majority of the solicitors, could not know all the facts to which they were required to and did make oath. It is perhaps only fair to say that the oath required is unnecessarily strong and impracticable.

As the petitions are filled, they are collected by the association, and when it thinks it has the necessary number of names, it files the petitions with the city clerk. In the presence of representatives of the association the clerk goes over each separate petition, counting the names and tabulating the result. If it equals the required twenty-five per cent, the city comptroller puts a force of men at work "checking" the petition. The presence of at least the required number of names, assuming all to be genuine, is jurisdictional. The petition must be *prima facie* sufficient. If not, the petition is either returned with the filing marks canceled or the association is notified that it has ten days within which to complete the petition. This matter is not optional with the clerk; it is stated in the alternative because that very point is now in litigation.

The second attempted recall affected not only the mayor, but also four councilmen. Three councilmanic petitions were actually filed, but the association was under the mistaken impression that a sufficient petition need have only twenty-five per cent as many names as the particular councilman received votes. The charter read plainly, however, twenty-five per cent of the "entire vote for all candidates for the office," and all three petitions were rightly held *prima facie* "insufficient." At this point contradictory opinions of the corporation counsel's office caused confusion; at first, the filing marks were ordered canceled, and the recall association notified that the petitions were held subject to its order; later, and finally, the association was informed that it had ten days within which to file a supplemental petition, which it did not do. It did, later still, remove the petitions, and four months afterwards, on the last day of 1911, having secured enough additional signatures to render them *prima*

facie sufficient, it unexpectedly filed two of them. The comptroller began the check, but the corporation counsel, following the last ruling of his predecessor in office, held that those petitions previously filed, found insufficient, and not completed within ten days, could not be refiled. The new names alone were too few to give jurisdiction to check. Notwithstanding this, the comptroller sent the petitions to the city council, certifying each as sufficient "on its face." The city council, regarding such a certificate as void, voted to place the petitions on file. Then the association went into court, asking an alternative writ of mandamus against the city council and city comptroller. On demurrer, the court sustained the city council, holding the comptroller's certificate inadequate. The comptroller, however, was required to answer the complaint, with his reasons for failing to "check" the petitions. It is the pendency of this action which leaves in doubt the proper disposition of a petition filed, but *prima facie* insufficient.

If the petition is on its face sufficient, the comptroller checks it. Three checks are made, unless, of course, the petition be found sufficient on the first or second check. On the first check, all questionable signatures are thrown out; on the second and third checks, the points in dispute having been decided by the comptroller or his deputy, many signatures are restored. The alphabetical card index system of the comptroller is also used to locate voters who may have changed their precincts since registration. Though yet an open question whether such names should be counted, the corporation counsel ruled in favor of counting them on the ground that such voters had the necessary qualifications as voters, and could correct their registration before the election by getting transfers to the proper precinct.

The causes for the rejection of names upon the check are: no registration, illegible or forged signatures, improper addresses and, in the case of the women, signatures with the initials of the husband. (The women were practically all registered under their own first names or initials.) The parties interested always keep voluntary or paid workers to watch the checking.

If the check shows the petition deficient in the number of genuine signatures, ten days are allowed for the filing of a supplemental petition. As only two filings are contemplated by our charter, if, when it is checked, the supplemental petition does not supply the deficiency of the original petition, the attempted recall has failed.

If it does supply the required number, the comptroller certifies the petition as "sufficient" unless enough names have been withdrawn to render it still insufficient. The Seattle charter is silent about withdrawals, but the Supreme Court of Washington had upheld the right to withdraw names from an initiative petition up to the time of the final certificate, and the comptroller was advised to accept withdrawals in the case of the recall.

Given a sufficient petition, the recall election differs little, except in the heat and bitterness engendered, from an ordinary election. Nominations are made by petition in accordance with the state mentioned before. It is important to notice that Seattle has almost eliminated political partisanship from municipal elections. No party designation of any sort is permitted on the ballot. This is of great consequence, because Seattle is a strongly Republican city, and the efficiency of the recall would be distinctly lessened if partisan considerations could control its use or even enter into the discussion of the issues raised by it. The absence of partisanship permits the decision of the issues upon their merits. Given these conditions, plus a full and free discussion, and the deliberate judgment of the majority of the people upon the question of a recall is not to be feared by any honest official.

Of Seattle's two experiences with the recall, the first, or Gill recall, was successful; the second, or Dilling-Blaine-Kellogg-Wardall-Steiner recall, was unsuccessful so far as at present determined.

The first recall occurred in the fall and winter of 1910-11. Hiram C. Gill, a typical politician of the old school, had been elected mayor in March, 1910, on a platform which frankly contemplated the establishment of a restricted district. It was to be located, said Mr. Gill, in an obscure part of the city where only the man searching for it could find it. Public gambling would not be permitted, nor a return be made to the "open town." Although Mr. Gill has naturally maintained that he kept all his promises, the facts are against him. The restricted district was established conveniently near the business center. Vice was not segregated and confined to the boundaries of the district. The social evil was as prevalent in the uptown hotels and the painted woman as frequently seen in the residence districts as ever. In addition, the vice district had become a veritable breeding place of crime, and the police department had become corrupted and demoralized. The then chief of police has since

been convicted of accepting a bribe and is now serving his sentence of from three to ten years in the state penitentiary at Walla Walla. Even the city health department had been dragged in for use as a means of collecting a weekly fee of two dollars and fifty cents per woman in the district through a weekly examination and issuance of a certificate, which would have been farcical had it not been fraught with such serious consequences. Open gambling was permitted under police protection within a few blocks of the city hall.

It is not my purpose or desire to go into further details of the conditions then existing than is absolutely necessary to show what the recall actually accomplished. Every loyal citizen of Seattle interested in good, clean, honest, efficient government would be glad to forget the few months of the Gill regime.

Another but less important matter added fuel to the flames of the recall sentiment. Mr. Gill had appointed as superintendent of lighting an employee of the Seattle Electric Company. Now it so happens that the City of Seattle owns and operates a municipal electric light and power plant which competes directly with the Seattle Electric Company. It was hotly charged that this superintendent was conducting the municipal plant solely in the interest of its private competitor.

Under the conditions which I have very briefly described, certain citizens opposed to their continuance, organized a public welfare league. This league with great care proceeded to gather its evidence. When compiled, the whole in great detail was submitted to Mayor Gill, who refused to act. The league then went into court, and on this evidence secured an injunction against the district. As in many cities, the council possessed the power of impeachment, but very naturally felt no inclination to take proceedings against a fellow official and former colleague. In this situation Seattle was confronted by the emergency which the recall was designed to meet. Though adopted in 1906, the law had remained unused, and almost forgotten. It was thought that it could not be operated successfully, and, in fact, Gill and his friends scouted the very idea that a sufficient petition could be secured. On the other side, the work was pushed with great earnestness for two months or more. Shortly before the filing of the petition, the women of Washington were enfranchised. About six hundred registered immediately, and signed the petition, although it proved to be sufficient without them. Gill made the

political blunder of rushing into court for an injunction to prevent the election. Refused relief in the state court, he added to his first blunder by turning to the federal court, where Judge C. H. Hanford granted him an injunction, and refused to permit the filing of a supersedeas bond on appeal. Jurisdiction by the federal court had been obtained by instituting the suit in the name of one Scobey, a resident of Indiana, claiming to own property in Seattle which would be taxed a few cents extra if this election were held. This interference with a local election through an outsider and by the federal court aroused great indignation throughout the city. The matter was at once carried before a judge of the circuit court of appeals, who permitted the filing of a supersedeas bond, and indicated that he disagreed with Judge Hanford on the merits. Perceiving that the election would be held in spite of Scobey, Gill had the case dismissed.

In the meantime, the city council had fixed the day of the election, and a bitter campaign had been begun. George W. Dilling, a business man of excellent reputation and record, was persuaded to become the "recall candidate." The issue between the two men was fortunately a clean-cut moral issue, and it was, therefore, possible to crystallize all the moral sentiment of the community in opposition to Mr. Gill, who, of course, had the unstinted support of all the elements that profit through vice. At the election Dilling led Gill by 6,300 votes. Brown, the Socialist, received almost 5,000 votes.

The story of the second recall is briefer. The agitation for it resulted from the refusal of Mayor Dilling to force the chief of police to dismiss the head jailer, John Corbett, against whom many charges of cruel and inhuman conduct had been made. The mayor justified his refusal on the ground that practically all the offences charged antedated his administration; that the chief of police had, at his request, investigated the recent ones and the general conduct of the head jailer during his administration and had reported the charges to be unfounded, and Corbett a humane and efficient jailer. Corbett had a long record of nearly twenty years of service in the department; under civil service regulations his dismissal must be accompanied by charges of misconduct. From dismissal by the chief, Corbett had the right to appeal to the civil service commission for a hearing, at which time the chief would be required to submit his proof of the charges made. The chief felt that he had no proof to justify the dismissal of Corbett.

Finding the mayor firm, a citizen's recall association sent to him a written ultimatum to dismiss Corbett within five days or submit to a recall. To this the mayor paid no attention. The association then instituted an active campaign for signatures. At the same time, and for various reasons, petitions against four councilmen were also circulated. After about seven weeks' work, the petitions against the mayor and three of the councilmen were filed. The latter, as previously explained, were *prima facie* insufficient. The petition against the mayor contained 10,254 names, reduced to 7,295 by the check. At the end of the period allowed by the charter—in this case stretched to twelve days, including Labor Day and election day—a supplementary petition bearing 2,617 names was filed. The check showed 1,753 of these genuine, or 377 more than enough, had not the friends of Mayor Dilling gathered some eleven hundred withdrawals, 931 of which were actually filed before the check was complete. Only 527 of these were checked, as that was sufficient to show the petition finally insufficient, and the second recall a failure.

Taking a broad view of Seattle's experience, the first recall demonstrated to the unbelieving politician of the old school that this new democratic contrivance, which kept him while in office always subject to removal by his constituents—his employers—could be worked, and would be worked when necessary. The second recall opened the eyes of agitators to the fact that the recall in Seattle was intended for and could only be operated successfully in cases of great emergency. No ordinary difference of opinion could, even by the process of malicious exaggeration, be magnified into motive power for a recall. The second recall would never have approached success, even to the extent of securing an election, had it not been for two circumstances not contemplated by the framers of the recall law; first, a second recall between two successive general elections; second, the enfranchisement of the women between elections. At Dilling's election 62,322 votes were cast: twenty-five per cent of that number, or 15,581, could not have been obtained by the citizen's recall association. The charter, however, made the vote at the "last general municipal election" the basis upon which to calculate the number necessary to secure a recall. Thirty-four thousand six hundred and eighty-one votes having been cast for mayor at the last general municipal election, a sufficient petition demanded 8,671 genuine signatures—the same number called for on the petition

for the recall of Mayor Gill. Hereafter the number of names required will not be less than fifteen thousand—a sufficient number to deter any rash attempts, for be it known that it is anything but a simple matter to collect 15,000 valid names, even from 75,000 qualified voters. On the contrary, it is a very difficult task, calling for much voluntary labor, a considerable expenditure of money, involving no thanks and much bitter criticism, both personal and journalistic.

Both Seattle's experiences with the recall were necessary to teach the citizens its true purpose and uses. With those lessons it seems probable that the recall will remain an unused part of her charter for some time to come, but will be at all times a potential deterrent to disregard of platform promises and the moral sentiment of the community.

It is possible, of course, that the recall provision of the Seattle charter could be improved. I have pointed out two defects shown to exist upon its first trial and corrected at once by state law. I have shown how ineffective is the "oath" to the signatures. Some think that much greater safeguards should be thrown around the collection of signatures. They point out that sixteen per cent of the names on the Gill petition were rejected, twenty-nine per cent of those on the main Dilling petition, and over thirty-three per cent of those on the supplemental Dilling petition. But the fact is that only a few names were rejected on the ground that the signatures were forgeries. Practically all the rejections were due to the carelessness of the signers or collectors in writing initials or addresses, or in failing to register. Doubtless the fact that the collectors were paid ten cents a name aggravated the evil. It was not feasible to wait until the comptroller checked the names and pay the collector on the basis of those passed by him as genuine. Any signature which looked like the name of a voter was worth ten cents. There were some, moreover, perhaps many, who signed in jest or with intentional carelessness, impatient to be rid of the solicitor or desirous of pleasing a friend. Though the average of thirty per cent of rejections seems large, yet lawyers conversant with the carelessness of the ordinary individual in signing deeds, mortgages, and other important legal documents, will not be greatly surprised at the amount of carelessness exhibited in the hasty signing of mere petitions.

It is thought that citizens sign petitions too readily, and without

proper consideration, and in proof of this it is pointed out that eleven hundred changed their minds and withdrew their names from the Dilling petition. But it must not be forgotten that the recall is a new democratic institution—that petitions have heretofore been harmless. After two experiences with the recall, the citizens of Seattle, realizing that a recall means political commotion, an interruption to business, and increased taxes, will be slow to affix their signatures unless really in earnest.

Those who believe the recall vicious frequently fail to come out with a frank statement of their open opposition to it, but suggest amendments, which, though plausible, would render the recall ineffective and unworkable. The suggestions made usually embody an increase in the percentage of signatures required, or the provision that all must go to the city hall to sign, or that those signing be restricted to those who voted for the incumbent but have since changed their minds; the fact that they voted for the incumbent to be determined by the oath of the signer. Most of the changes are fathered by enemies of the recall principle, and almost any of them would kill it effectually. The recall is of value only so long as it is readily workable. Make it more difficult to institute than at present in Seattle, and you have relegated it to the political scrap heap along with the "impeachment." The working of the recall in Seattle has justified it as a democratic political institution, has demonstrated its usefulness by permitting the people summarily to remove from office a mayor who was violating his campaign promises, debauching the city health department, demoralizing the police department, and conducting the city government contrary to the desires of the majority of the citizens, whose government it was, and in utter disregard of the moral sentiment of the community. The removal of such a man was a triumph of democracy, and the instrument of his removal proved to be of invaluable assistance to good municipal government in Seattle.

PART THREE

The Judicial Recall

THE JUDICIAL RECALL—A FALLACY REPUGNANT TO CONSTITUTIONAL GOVERNMENT

BY ROME G. BROWN,
Attorney-at-Law, Minneapolis, Minn.

Fallacious Methods of Advocacy

The other evening, on a city street corner, I was attracted by a hue and cry and by discordant notes emanating from a badly played violin in the hands of an up-to-date street fakir around whom, drawn by the smoky glare reflected by an improvised torch and by the din of voice and fiddle, were gathering the passersby to listen to the "lecture," guaranteed free to everybody and to be followed by a most extraordinary "offer" for the benefit of all mankind. In high sounding phrases, smacking of all the medical learning from Æsculapius down to date, but with quotations from standard authorities garbled and distorted into perverted meanings, and with now and then a homely but subtle and insidious *ad hominem* appeal, the fakir detailed most of the physical ills with which the human body is afflicted and alleged symptoms of this and that disease; and, having scared his hearers into a receptive mood, he launched forth with, as it seemed to their excited minds, bursts of eloquent and impassioned oratory. He represented the average human being as an object of piteous decrepitude or as the hopeless subject of degenerating tissues and death dealing germs. His entire argument was a mass of unscientific exaggeration of known evils and of worse ones purely imaginary. He inveighed against all the medical learning of the day and against the expert knowledge and experience of those recognized as authority in the science of hygiene, medicine and surgery. All learning and experience as shown from history were nothing. The wisdom of the fathers was merely tradition founded in error. What they had wrought out and handed down, the greatest discoveries and developments of the science of safeguarding human life and health which had brought the human race to the highest standard of scientific warfare with disease, were mere mockeries to the real truth. All of which,

and more, was easily proved by the fact that the present systems of treatment were unavailing to eradicate disease, that men still continued to die and to suffer from ills which brought, and at all times threatened, incapacity and death. Having thus demonstrated his major premise, and at the same time all the other assumed elements of his syllogism, he reaches down and brings forth a little sealed box marked "The People's Own Cure—a Progressive Remedy;" and asserts his assumed conclusion that this remedy, by its virtues, as demonstrated by its label, is the final and only true solution of the problems of human illness. Incredulous as I had been, I seemed to become changed from merely a curious listener to a submissive patient. Temporarily, through a sort of mental indolence, the high-sounding, oft-repeated periods of the phrase maker had seemed almost to benumb my reason and to send me hopelessly groping after new means of self-protection, for which I was accustomed, in my saner moments, to rely upon a fund of knowledge slowly accumulated by careful study and experience. Healthy as I supposed I was beyond the average man of my age, I felt, for the first time, unusual dimness of vision, a weakness in my back, defects in my breathing, a numbness in my feet and limbs and a new sensation of heart palpitation. How had that fool of a life insurance medical examiner recently passed me as sound? I had now a chance at least to make good; and it was only shortly before I came to myself that I, too, was reaching into my pocket to join the crowd in buying and partaking of this alluring "cure-all," thus suddenly and adroitly flashed upon them, without analysis and without any assurance of its nature or effects, except as conveyed by its seductive label.

Not for the purpose merely of indulging in a figure of speech, not merely to reduce an answering argument to terms of ridicule, much less to exploit my sense of humor—on the contrary, as a carefully deliberated illustration of the methods commonly employed in advocating the measures of the Judicial Recall—I offer this example of the up-to-date nostrum vendor. Like the advocates of those measures, he defies the experience of all history, he carps at all established institutions, pictures all progress as a delusion of stilted ignorance and brands as "reactionary" all those who hesitate or refuse to attach themselves to his newly discovered panacea, brought now for the first time in modern history to public attention under the enticing title of a "progressive" remedy. No real diagnosis, no scientific study

or consideration of the nature of the functions of the system to which it is to be applied, no scientific study of remedial agencies, no test or examination of the medicine, whether it be a compound or a single element, no deliberate consideration of the necessary or possible effects of its application—only a cry of pain and a jump in the dark—these are the characteristics of the methods employed by exhorters for the Judicial Recall in presenting their vicious but seductive fallacy, a fallacy which is repugnant to constitutional government.

An examination of the considerations which have been urged for the Judicial Recall, whether it be the Recall of Judges or of Judicial Decisions, and whether made by an ex-President or by United States senators, arrogating to their peculiar views the exclusive right to the title of "progressive," shows, without exception, the adoption of the street vendor's methods. They all dwell upon and exaggerate the existence of error, injustice, imperfections in the administration of justice or in the personnel of the judiciary, breathe distrust for existing conditions and disrespect for present institutions and incite discontent among all the restless elements of the unthinking and the untaught; and thereby confront large masses of the people with their first lessons in constitutional government, administered in the form of demagogic tirades poured forth not only against our federal and state constitutions but against any form of constitutional government. At the very time of the greatest sensitiveness of public feeling, at a period most critical, because of the unsettled condition of public opinion on great political, economic and social questions, these pretending teachers of the multitude, who, as citizens and as office holders in various capacities, have sworn to support the government of the United States and its constitution, are insidiously filching from the minds of those taught in the principles of constitutional government and traducing to those yet untaught, the fundamental and vital principles and axioms which are the very basis of our republican form of government. They distort precedent, misquote authority and misrepresent the purposes for which our government was framed. They replace justifiable feelings of contentment and prosperity with discontent and conviction of prevalent social and industrial injustice. They even extend their exaggeration of unnecessary evils to the highest fountain of justice that has ever existed under any human form of government, to that court which, under our constitution, stands as the final protection against injustice, as to which court the

humblest citizen of the land may feel that, as stated by our former minister to England, Edward J. Phelps,

If oppression and wrong should gain the ascendancy, and injustice stalk abroad in the land, and all else fail him; nevertheless his humblest roof, and all things that are sheltered beneath it, would find, somehow, someway, a final refuge and protection in the Supreme Court of the United States.

It is this court which Rufus Choate, in his speech before the Constitutional Convention in Massachusetts in 1853, presented to those who were crying for unrestrained and unlimited power of the people as the final bulwark of law and justice, guaranteed by our constitution to every citizen—a court, as he said,

Appropriated to justice, to security, to reason, to restraint; where there is no respect of persons; where will is nothing and power is nothing and numbers are nothing, and all are equal and all secure before the law.

Without admitting the evils enumerated and assumed by the advocates of the Judicial Recall as a justification and final argument for their proposition, I would begin where they leave off. I would assume, for the purpose of argument, the existence of many of the evils which they relate. I would remind them that the best elements of the national and state bars are seriously and energetically working for practical reforms in legal procedure, in the manner of the selection of judges, and in the prevention of delays and against the miscarriage of justice, and this, too, by feasible and constitutional measures and by every constructive and really progressive method which can be devised; and that the fact that satisfactory remedies have not yet been attained, is not the fault of the bench or of the bar, whose leaders have for years been urging upon the people, through the legislatures, fully formulated and efficient remedial measures. The fault lies with the people themselves, whose direct representatives in the legislatures, national and state, refuse properly to consider and act upon proposed laws of authenticated and undeniable efficacy. The failure or absence of remedy in no degree constitutes a justification for the application of the drastic and suicidal measures involved in the Judicial Recall.

Contrary to the methods of the Recall advocate, let us bring ourselves back, first, to a consideration of the nature and functions of the system to which this untried specific has been prescribed. Then let us examine the real character of the proposed remedy itself.

By no other method can its desirability or its efficacy be determined. By no such method has it ever been presented by its advocates. It will appear that the proposition of the Judicial Recall, whether in the form of the Recall of Judges or of Judicial Decisions, is not one of remedy for existing evils, but is an attack upon constitutional government itself; for it strikes at the very keystone upon the stability of which depends our present form, or any form, of constitutional government.

THE NATURE AND FUNCTIONS OF OUR CONSTITUTIONAL GOVERNMENT

To discuss comprehensively the questions involved would be to repeat and enlarge upon great constitutional authorities who have presented, in general and in detail, the growth, nature and extent of constitutional functions including those of the judiciary. In brief outline, let us here recall some great demonstrated truths as we examine the fallacies of the advocates of the Judicial Recall in the assumptions which they make as to the nature and functions of our constitutional form of government.

The Fallacy of Disregarding Human Fallibility

The first and most inexcusable fallacy is the assumption that the existence of evils, political, economic or judicial, arising in connection with this or that department of government, is necessarily an indictment of the administration of the government, of the particular department in connection with which the evils are found to exist, or of the government itself. Such assumption disregards the ever present and irremediable element of human imperfection. It is not and never can be within the power of man, at any stage of civilization, to establish, maintain and administer any institution, governmental, sociological, industrial or otherwise, free or even substantially free from incidental oppression, injustice and inequality, or from sacrifice, to some degree, of natural and theoretical rights of person and of property. The crudest social compact involves, to a greater or less extent, sacrifice. The most perfect form of government must involve the same sort of sacrifice and, with its human element, also many evils, both those avoidable and those unavoidable, evils which in their concrete application instance injustice, inequality and even oppression. The merits of any particular form of government or

of its administration, therefore, are not decided by the fact of the existence or non-existence of this or that evil, nor from the presence or absence of this or that instance of injustice, inequality or oppression. The question is: In view of the experience of mankind as known by the history of governments, what form, and what provisions of fundamental law, will in the end most tend to diminish the classes or instances of evil? Under what system may the natural evolutionary processes of change, by the guidance of intelligent efforts for reform and progress, best and furthest work out in the direction of universal freedom, equality and justice?

The fathers of our constitution did not predict or expect a perfect government free from the results of human error in its administration. The constitution was established, not with the expectation of forming a "perfect" union, but a "more perfect" union, and to establish—not finally and without exceptional failure, but in general, so far as human foresight and experience could provide—justice, domestic tranquillity, means of common defence, the blessings of liberty to ourselves and posterity and to provide the best means for working out, with all the vicissitudes of success and failure, those blessings of liberty. Its object was to establish a government which should in the long run, all things considered, be most conducive to "promote the general welfare" of the people who should live under it.

That the accomplishment of these purposes is best assured by our constitution is taught by the science of government, by experience and by authority. Gladstone characterized our constitution as "The most wonderful work ever struck off at a given time by the brain and purpose of man." No change in the essential form of government, no fundamental constitutional change, can be justified on the plea of the existence of unremedied or even irremediable evils. As expressed in the words of Lincoln:

Before entering upon so grave a matter as the destruction of our national fabric, with all its benefits, its memories and its hopes, would it not be wise to ascertain precisely why we do it? Will you hazard so desperate a step while there is any possibility that any portion of the ills you fly from have no real existence? Will you, while the certain ills you fly to are greater than all the real ones you fly from—will you risk the commission of so fearful a mistake?

Appeals to popular prejudice inducing unrest and discontent at existing evils, should be met with distrust. Clamors for the

"rights" of the people should be checked with a steadfast but more altruistic regard for the preservation of the constitution which was expressly established to safeguard those rights. There should be kept in mind the warning of Hamilton when he said:

A dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidden appearance of zeal for the firmness and efficiency of government. History will teach us that the former has found a much more certain road to the introduction to despotism than the latter, and that of those men who have overturned the liberties of republics the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues and ending tyrants.

The Fallacy of Pure Democracy

The fundamental fallacy of the Judicial Recall is the assumption that the object of our form of government and the goal toward which its administration should work are the establishment and promotion of a government directly by the people, in which the will of the majority, as expressed at the polls, should at all times receive the nearest possible immediate response through the machinery of the different departments by which the powers of government are administered. The assumption is, not merely that ours was to be a government generally democratic in form and in essence, but that in fact it was intended to be one of pure democracy; and that any substantial check or restraint upon the responsiveness by governmental departments to the will of the people expressed through their majorities from time to time, are, when shown by experience to be real checks and hindrances, imperfections, the immediate or gradual elimination of which should be the chief object of any reform movement which is entitled to be denominated "progressive." It is the presentation of this fallacy, regarding the fundamental object of our system of government, to the individual voter, whom this fallacy places upon a pedestal, as the direct representative of the democratic idea of "sovereignty" and whose sovereign rights the same fallacy has assumed to have been usurped,—it is this fallacy which is the root of all the misinformation, misunderstanding, deceit and illusion which have given the Judicial Recall its seeming popularity. Its falsity, however, is demonstrated by even the most superficial consideration of the nature and character of our form of government, of the functions of its different departments, and of the objects and efficiency of our constitution.

Our government is a democracy, but it is a *constitutional* democracy; and the very object of the constitutional feature is to place in the way of the sovereign people those limitations, checks and balances which, while not preventing enforcement of the will of the sovereign people, should insure the wise and deliberate exercise only of wise and deliberate, and therefore properly restrained, sovereign authority. Its primary object was to prevent the immediate enforcement of the unrestrained, unchecked and unlimited will of the majority, whether expressed at the polls or otherwise. Sovereignty invested in a single person or in a few, passing, without consideration of other distinctions, by inheritance, checked only by promises of respect for individual rights,—promises wrested from the sovereignty by force of arms, as were those of our Bill of Rights from King John at Runnymede, rights, however, vouchsafed only by ties of tradition or by precedent,—constituted the tyranny of monarchy, the evils and abuses of which, fresh in the minds of our constitution makers, rendered it abhorrent to them.

But, learned in the history of nations and conscious of the fate of states subjected to the unrestrained will of the people, they saw another danger to be avoided, greater than that of the tyranny of monarchy. Our government must insure to its people not only the blessings of liberty, not only the natural right of dominance by the people as sovereign, but it must safeguard forever those blessings and rights by a form of government adapted to that purpose, and the stability of which should, as far as human intelligence could provide, be made certain against the self-destructive elements inevitably accompanied by an absence of proper checks, limitations and balances, upon even the sovereign power of the people. They were not satisfied to leave such checks and limitations to rest upon precedent and to be presented by analogy or implication from the recorded history of events. They must be expressed and recorded as the supreme law of the nation, paramount to the will of the sovereign power and to the will of its representative governmental departments. In their wisdom they saw in this express and written, fundamental and paramount law the only sure and safe protection against the dangers of the tyranny of democracy. Recognizing the fact that, with further industrial, economical and social development, the fundamental law thus established might not be sufficiently elastic for the necessary adaptation, they provided for amendment

by a method, slow but not cumbersome, as facile and speedy as could be consistent with deliberate and well considered action and therefore with the necessary safeguards against the results of caprice, temporary passion or prejudice. While exercising the greatest wisdom of their times, they bowed wisely and consistently to the wisdom of future generations, but only to a wisdom which reaches and acts upon sound judgment, as their judgments were then pronounced, after dispassionate contemplation, deliberation and discussion of facts, theory and precedent.

The government established *is* a government "by the people." It is the nearest to a government by majorities that can be established consistent with the necessary elements of stability and the safeguarding against tyranny, which safeguards can only be retained by the constitutional checks and limitations upon the exercise of the sovereign authority and of the powers of its representative departments in the government. Any measure which, like the Judicial Recall, ignores these safeguards or their necessity is subversive.

Daniel Webster said in 1848:

Whoever says, or speaks as if he thought, that anybody looks to any other source of political power in this country than the people must have a strong and wild imagination for he sees nothing but the creations of his own fancy. He stares at phantoms. Let all admit what none deny, that the only source of political power in this country is the people. Let us admit that they are sovereign for they are so, that is to say, the aggregate community, the collected will of the people, is sovereign.

Abraham Lincoln said:

A majority held in restraint by constitutional checks and limitations, always changing easily with deliberate changes of popular opinion and sentiment is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or despotism.

Quoting these words from Lincoln, Senator Elihu Root at the recent Chicago convention said:

That covenant (the Bill of Rights) between power and weakness is the chief basis of American prosperity, American progress, and American liberty. . . .

We know that there is no safe course in the life of men or of nations except to establish and to follow declared principles of conduct. There is a divine principle of justice which men cannot make or unmake, which is above all governments, above all legislation, above all majorities. The limitations upon arbitrary power, and the prohibitions of the Bill of Rights which protect liberty and insure

justice, cannot be enforced except through the determinations of an independent and courageous judiciary. . . .

So the three departments, the executive, legislative and judicial, were established, each separate from and independent of the others. No changing whim of the people could, even in two years, change the entire legislative representation, for the senate could not be entirely changed except after six years. It vested in the legislative department certain specified powers and expressly prohibited the exercise of other powers by either the federal or the state governments, expressly reserving to the states respectively, or to the people, all powers not so expressly delegated to the United States nor prohibited to the states. In order to avoid the oppression of the tyranny of undeliberate or capricious actions by the sovereign people, it was directly and expressly provided in section 9, Article 1, against the suspending of the privilege of the writ of *habeas corpus* and the passing of bills of attainder or *ex post facto* laws, against the levying of disproportionate taxes and of duties upon articles exported between these states; prohibiting any state from enforcing any law impairing the obligation of contracts, and from levying any impost or duty. And, later by amendments, the same supreme law prohibited the congress from interfering with the establishment and free exercise of religion, with freedom of speech and of the press, or the right of people peaceably to assemble and to petition for redress of grievances; against the quartering of soldiers in any house without the consent of the owner, the violation of the security of person and property against unreasonable searches and seizures without warrants properly verified and issued, depriving any person of his life, liberty or property without due process of law, and the taking of private property for public use without compensation; and insuring the right of trial by a jury for criminal prosecutions and the protection of the accused against arbitrary and illegal punishment, the prohibition of excessive bail, of excessive fines and cruel punishments; the prohibition of slavery or involuntary servitude at any place within the jurisdiction of the United States; and further prohibiting any state from making or enforcing any laws which shall abridge the privileges or immunities of citizens of the United States, or which shall deprive any person of his life, liberty or property without due process of law, or from denying to any person within its jurisdiction the equal protection of the law; and prohibiting either the United States or any state from denying or abridging the

rights of citizens on account of race, color or previous condition of servitude.

Read and consider these limitations, take any one of them and, as an individual, ask yourself seriously the question whether you, yourself, from considerations of your own selfish interest, would willingly and deliberately hazard the risk of giving up forever the safeguard to your life and liberty expressly vouchsafed by the protective provisions thus established as the law of the land, which no legislature and which no majority of the people may ever capriciously set aside. If you happen to feel no selfish need of such protection, then consider the question as one touching your own posterity, or as one concerning the entire citizenship of this republic and those who shall come after them, and at the same time concerning the very integrity of the government under which you and yours, and they and theirs, are to live. Not until you have brought yourself to the conclusion that, not merely one or a few of such limitations, but each and all of them, without exception, are unnecessary and unwise, and that they, each and all, may at any time be disregarded, —not until then can you be a consistent supporter of the Judicial Recall. These are questions which are, as is the question here under consideration, finally answered in only one way by any citizen who has calmly considered all the facts pertaining to the issue and whose conclusion is the result of cool, deliberate and impartial judgment.

These are some of the limitations placed upon the legislative powers of the people in the federal constitution, as similar limitations have been placed in all state constitutions, for the very reason that the judgment and discretion of the people could not, at all times, and without restraint and limitations, be relied upon, especially in times of agitation and in times of political or economic crisis. The necessary safeguards could be insured only by these express limitations upon the power of the sovereign people to legislate, and upon the privilege of the people to have legislation enforced.

The functions, powers and duties of the executive department and of its members were set forth and limited by express provisions.

By the same constitution, as by similar provisions in all state constitutions, there was also established a third department of government, the judicial, with certain express original jurisdiction and with such appellate jurisdiction, both as to law and fact, as should be provided by the legislative department. And by the same instrument it was provided (Art. VI) that,

This constitution . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

And finally, it was expressly provided (Art. vi) that,

The senators and representatives before mentioned, and the members of the several state legislatures and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution.

Such are the nature, purpose and effect of the provisions defining the functions of our constitutional government; and it is in respect to these and similar provisions that it differs upon the one hand from a monarchy and upon the other hand from a pure democracy. While it is a government by the people, it is a government of checks upon the unrestrained exercise of sovereign authority. Its making was the freest possible from any passion or prejudice. In the words of Jay:

Men who possessed the confidence of the people, and many of whom had become highly distinguished for their patriotism, virtue and wisdom in times which tried the minds and hearts of men, undertook the arduous task in the mild season of peace, with minds unoccupied with other subjects. They passed many months in cool, uninterrupted and daily consultation, and finally, without having been awed by power or influenced by any passions except for love of their country, they presented and recommended to the people the plan produced by their joint and very unanimous councils.

Their combined learning in the science of government has not been equaled by any body of men ever assembled for the same or similar purpose. As expressed by Hamilton:

If it had been found impossible to have devised models of a more perfect structure than the enlightened friends of liberty would have been obliged to have abandoned that species of government as indefensible. The science of politics, however, like most other sciences, has received great improvement. The efficacy of various principles is now well understood which were either not known or imperfectly known to the ancients. The distributions of powers into distinct departments, the introduction of legislative balances and checks, the institution of courts holding their offices during good behavior, the representation of the people in the legislatures, by deputies of their own election—these are wholly new discoveries, or have made their principal progress toward perfection in modern times. They are the means and power by which the excellencies of representative government may be retained, and its imperfections lessened or avoided. . . .

They heeded and applied the warnings of authority and of experience. The details of their structure varied from the ideal only in

so far as hard experience and wise precept showed to them the necessity of restraining safeguards in order to insure practicability and stability.

Aristotle, nearly four centuries before the Christian era, said:

One species of democracy is where the public offices are open to every citizen and the law is supreme. Another species of democracy is where the public offices are open to every citizen, but where the people and not the law is supreme. The latter state of things occurs when the government is administered by psephismata (by popular vote) and not according to laws, and it is produced by the influence of the demagogues. . . . But where the laws are not supreme, demagogues arise; for the people become as it were a compound monarch, each individual being only invested with power as a member of the sovereign body; and a people of this sort, as if they were a monarch, seek to exercise a monarchical power in order that they may not be governed by the law, and they assume the character of a despot; wherefore flatterers are in honor with them. A democracy of this sort is analogous to a tyranny (or despotism among monarchies). Thus the character of the government is the same in both, and both tyrannize over the superior classes, and psephismata are in the democracy what special ordinances are in the despotism. Moreover, the demagogue in the democracy corresponds to the flatterer (or courtier) of the despot; and each of these classes of persons is the most powerful under their respective governments. It is to be remarked that the demagogues are, by referring everything to the people, the cause of the government being administered by psephismata, and not according to laws, since their power is increased by an increase of the power of the people, whose opinions they command. The demagogues likewise attack the magistrates, and say that the people ought to decide and since the people willingly accept the decision, the power of all the magistrates is destroyed. Accordingly, it seems to have been justly said that a democracy of this sort is not entitled to the name of a constitution, for where the laws are not supreme, there is no constitution. In order that there should be a constitution, it is necessary that the government should be administered according to the laws, and that the magistrates and constituted authorities should decide in the individual cases respecting the application of them.

Burke, in his reflections on the French Revolution, said:

Until now we have seen no example of considerable democracies. The ancients were better acquainted with them. Not being wholly unread in the authors who have seen the most of these constitutions, and who best understood them, I cannot help concurring with their opinion that the absolute democracy, no more than the absolute monarchy, is to be reckoned among the legitimate forms of government.

Webster, in his speech on the Rhode Island government, said:

The people cannot act daily as the people. They must establish a government and invest it with as much of sovereign power as the case requires. . . .

The exercise of legislative power and the other powers of government immediately by the people themselves is impracticable. They must be exercised by representatives of the people, and what distinguishes the American government as much as anything else from any government of ancient or modern times, is the marvellous felicity of the representative system. . . . The power is with the people, but they cannot exercise it in masses or per capita. They can only exercise it by their representatives. . . . It is one of the principles of the American system that the people limit their governments, national and state. It is another principle, equally true and certain and equally important, that the people often limit themselves. They set bounds to their own powers. They have chosen to secure the institutions which they established against the sudden impulse of mere majorities. All our institutions teem with instances of this. It was this great conservative principle in constituting forms of government, that they should secure what they had established against hasty changes by simple majorities. . . . It is one remarkable instance of the enactment and application of that great American principle that the constitution of government should be cautiously and prudently interfered with and that changes should not ordinarily be begun and carried through by bare majorities. . . . We are not to take the will of the people from public meetings, nor from public assemblies, by which the timid are terrified and the prudent are alarmed, and by which society is disturbed. These are not American modes of securing the will of the people, and never were.

Washington recognized the impracticability of a pure democracy and of the necessity in any form of government of restraint upon the exercise of the will of majorities. "It is on great occasions only," he said, "and after time has been given for counsel and deliberate reflection that the real voice of the people can be known." And the following are also his words:

Republicanism is not the phantom of a deluded imagination. On the contrary, laws under no form of government are better supported, liberty and property better secured, or happiness more effectually dispensed to mankind. . . . If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment, in the way which the constitution designates. But let there be no change by usurpation; for, though this in one instance may be the instrument of good, it is the customary weapon by which governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any partial or transient benefit which the use can at any time yield. . . . Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect, in the forms of the constitution, alterations, which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. . . . This government, this offspring of our choice,

uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of liberty. . . . The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the constitution which at any time exists, till changed by the explicit and authentic act of the whole people, is sacredly obligatory upon all.

Madison said in the *Federalist*:

A pure democracy can admit of no cure for the mischiefs of factions. A common passion of interest will in almost every case be felt by a majority of the whole. A communication and concert result from the form of government itself, and there is nothing to check the inducement to sacrifice the weaker party or any obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence. Their conditions have ever been found incompatible with personal security or the rights of property, and have in general been short in their lives as they have been violent in their deaths. Theoretical politicians who have patronized this species of government have erroneously supposed that by reducing mankind to a perfect equality in their political rights they would at the same time be perfectly equalized and assimilated in their possessions and opinions and their passions.

Lecky, in his "Democracy and Liberty," says:

One thing is absolutely essential to its safe working, namely, a written constitution securing property and contracts; placing difficulties in the way of organic change; restricting the power of the majorities, and preventing outbursts of mere temporary discontent and mere casual conditions from overturning the main pillars of the state.

Mill, in his essay on "Government," says:

In this great discovery of modern times, the system of representation, the solution of all the difficulties, both speculative and practical, will perhaps be found. If it cannot, we seem to be forced upon the extraordinary conclusion that popular government is impossible. . . . The community can act only when assembled, and when assembled it is incapable of acting. The community, however, can choose representatives.

Tucker, in his work on the Constitution, says:

Representation is the modern method by which the will of a great multitude may express itself through an elected body of men for deliberation in lawmaking. It is the only practicable way by which a large country can give expression to its will in deliberate legislation. Give suffrage to the people; let lawmaking be in the hands of their representatives; and make the representatives responsible

at short periods to the popular judgment, and the rights of men will be safe, for they will select only such as will protect their rights and dismiss those who, upon trial, will not. . . . The government of the numerical majority is the mechanism of brute force.

The federal supreme court, speaking through Chief Justice Fuller, after quoting from Webster's argument in the Rhode Island case, said in the case of *In re Duncan*, 139 U. S. 449, 461:

By the constitution, a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, national and state, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities.

Senator Henry Cabot Lodge, in his recent address, "The Constitution and its Makers," says:

The destruction of an independent judiciary carries with it everything else, but it only illustrates sharply the general theory pursued by the makers of the constitution. They established a democracy, and they believed that a democracy would be successful; but they also believed that it could succeed solely through forms and methods which would not make it impossible for the people to carry on their own government. For this reason it was that they provided against hasty action, guarded against passion and excitement, gave ample room for the cooler second thought, and arranged that the popular will should be expressed through representative and deliberate assemblies and the laws administered and interpreted through independent courts. Those who would destroy their work talk continually about trusting the people and obeying the people's will. But this is not what they seek. The statement as they make it is utterly misleading. . . . The framers of the constitution made it in the name and for the benefit of the people of the United States; for the entire people, not for any fraction or class of the people. They did not make the constitution for the voters of the United States. They recognized that the popular will could only be expressed by those who voted and that the expression of the majority must in the end be final. But they restrained and made deliberate the action of the voters by the limitations placed upon the legislative, the executive, and the judicial branches, so that the rights of all the people might be guarded and protected against ill-considered action on the part of those who vote. Those who now seek to alter the fundamental principles of the constitution start with a confusion of terms and a false proposition.

These are some of the considerations by which is demonstrated the fallacy of pure democracy, or the fallacy of direct adjudication of constitutional questions by popular vote.

The Fallacy of Judicial Usurpation

Another distinct but in many respects correlated fallacy indulged in by the advocates of the Judicial Recall is in respect to the nature and propriety of the powers of the judiciary. Where the evident functions of the court are admitted, their exercise, even within constitutional limits, is criticised as unwarranted and arbitrary; and the very existence of such powers is made the object of denunciation. From such proceed an excoriation of the constitutionally established powers of the judiciary and a demand that, by the indirect method of the Recall of Judges or by the more direct method of the Recall of Judicial Decisions, the protective and safeguarding restraints and limitations upon the immediate and direct enforcement of the will of the majority be made ineffective. Ex-President Roosevelt in an editorial in the *Outlook* of March 9, 1912, denounced our system of restraint by express limitations and held up as exceptional and unnecessary the admitted power of the judiciary, in this country, to decide between the logical requirements of a written constitution and the seeming requirements of a statute passed ostensibly for the purpose of improving social or economic conditions. He said:

I speak purely of the kind of decisions which only American courts are entitled to make, the kind of decision which no judge in our neighbor Canada, *in Australia*, in England, in Germany or in France has the right to make, or would for one moment be permitted to make,—I am speaking of the action of the court of a state when it declares that a law passed in the collective interests of the whole community is unconstitutional.

The less shrewd, the more ingenuous and frank advocate, the typical advocate, of the Judicial Recall carries his fallacy to the extent of an assumption and express statement that the courts, having originally been established as a useful, if not necessary, department of government, have actually usurped powers and functions in no wise originally intended for them; that they have arbitrarily and without constitutional warrant arrogated to themselves a sort of final despotism, inconsistent with all proper theories of our form of government, and have asserted by gradual usurpation a sort of sovereignty of their own at war with the real sovereignty of the people. It is by such usurption, it is claimed, that the courts now exercise, the power to declare invalid and unenforceable statutes found repugnant to constitutional provisions. It is asserted that these usurped powers should be taken away by other, and, as it is said, perhaps

similar, arbitrary methods defying all constitutional considerations; so that thus there may be recovered to the people themselves the powers which have been insidiously but wrongfully wrested from them. This fallacy persists, from the covert misleading attacks made upon our constitution through comparison with unconstitutional systems of monarchy or democracy, systems impossible for us, to the open, unqualified denunciation of our entire system of government and of its constitution, and the open charge, as the basis of the argument for the Judicial Recall, that the judiciary have stolen, by gradual, unconstitutional encroachment and usurpation, the real sovereignty which was intended to rest at all times and under all circumstances directly with the people. Such is the vice of the insidious and misleading appeal to the voter, made by the self-seeker for notoriety or for office, who pretends to teach his hearers that government "by the people" means, not our form of government as administered under the constitution, but another and different system of government; or that it means our system, so far as mere matter of form is concerned, but administered in such a way that its essence shall be lost and only the mere form left, fragile and responsive, without limit and without delay, to the changing demands of the people, as expressed from time to time by their majority vote. Such is the vice of the cry that the constitution and the law must not be greater than their makers; that judges are merely the servants of the people; that the people made the fundamental law and that they make the statutes and that their last expressed will, as represented by a temporary majority, should be directly enforceable as a law paramount to all others.

Let us, who as citizens have sworn to support our constitution and our government and laws under that constitution, and who, respecting our oaths, insist that changes in government, or in the administration thereof, shall be brought about only through constitutional methods, consider for a moment the constitutional functions of the judiciary and the necessity of the preservation of these functions, and particularly of its independence.

The necessity of constitutional limitations as essential to the efficiency and stability of our form of government has been shown. But these limitations and restraints could not be enforced, except through a judicial department; and it was for that purpose primarily that the judicial department was established. It was upon the courts under our system of government that the only ultimate reliance

could be placed to safeguard and enforce the constitutional limitations expressly placed upon the sovereign power of the people. It was expressly made the duty of the federal and of the state courts to observe this fundamental law as the supreme law of the land; this is the duty which has been performed by the federal and state courts and it is by the performance of this function that our constitutional government has been preserved. This duty included the power of the courts to declare invalid any statute if repugnant to constitutional provisions. That this duty and power were originally imposed upon the courts as an essential feature of the new form of government and is in no degree a usurpation or after-thought, is shown by the fact that the deliberations of the constitutional convention at all times assumed such power to be intended for the judiciary. That it was so understood by the several states in ratifying the constitution is shown by the fact that the existence of this very power in the judiciary was everywhere urged upon the states as the great safeguarding provision which, as against all the timorous feeling of uncertainty, should make them assured of the safety and efficiency of the new constitution and act as a compelling reason for its unanimous adoption. Ellsworth, on January 7, 1788, urging the ratification of the constitution upon the Connecticut convention, said:

If the general legislature should at any time overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers if they make a law which the constitution does not authorize, it is void; and the judicial power, the national judges, who to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is a usurpation upon the federal government, the law is void; and upright, independent judges will declare it so.

So at the same period Hamilton was urging in the *Federalist*:

There is no liberty where the power of judging be not separate from the legislative and executive power . . . The complete independence of the courts of justice is peculiarly essential in a limited constitution . . . Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice whose duty it must be to declare all acts contrary to the commands of the constitution void.

So Chief Justice Marshall, in the case of *Marbury v. Madison*, 1 Cranch, 368, 388, summarizes the constitutional provisions including those making it the supreme law of the land and binding upon all courts, federal and state, and requiring all judges to swear to its sup-

port and the requirement by the yet sovereign people, through their legislatures, of an oath by every judge that he "will faithfully and impartially discharge" all the duties incumbent upon him according to the best of his abilities and understanding, "agreeably to the constitution and laws of the United States;" and he demonstrates that the power and duty of the courts to declare invalid unconstitutional statutes are imposed not only by necessary implication but by express provision. He said:

This original and supreme will [the people] organizes the government, and assigns to different departments their respective powers. It may either stop here, or establish certain limits not to be transcended by those departments.

The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, [either] that the constitution controls any legislative act repugnant to it, or that the legislature may alter the constitution by an ordinary act.

Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.

If the former part of the alternative be true, then a legislative act contrary to the constitution is not law; if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable.

A Significant Example of Fallacious Statement

Ex-President Roosevelt cites Australia as a country where the powers of the courts, as exercised in the United States, find no parallel. As pointed out by Justice Burch of the Kansas supreme court in a recent address, it is the instance of Australia which shows a deliberate adoption of our constitutional methods and of the very powers of the judiciary which are now widely made the subject of denunciation. As late as January, 1901, upon the address of all the Australian colonies to the British crown, there was put into effect, for the government of the people of the entire Australian continent, a written constitution modeled upon that of the United States of America. For

five years representatives of the colonies had discussed with the greatest learning and research the merits and demerits of different forms of government as shown by the experience of parliamentary systems of government and of that of the United States and other countries, with the result that the American precedent became the guide and model of a new continental government. It followed closely, in many respects, the American model in its separations of federal and state authority, and in its division of power between the three separate and independent, legislative, executive and judicial departments, and, what is more important, with a federal judiciary as the supreme interpreter of the constitution and with the constitution as the supreme law of the land. And for ten years prior to the time when ex-President Roosevelt was claiming a repudiation by Australia and other nations of the world of the power of the judiciary to prevent enforcement of a legislative statute as repugnant to the supreme written law of the land, the courts of the commonwealth of Australia had, following the precedent of decisions of the supreme court of the United States, been declaring numerous statutes, even some affecting human rights from a vital standpoint, "*ultra vires*," that is, unconstitutional. Such decisions included those declaring invalid the federal act establishing a worker's mark, passed in the interests of union labor, as an invasion of the separate powers of a state over domestic commerce and industry; a federal act attempting to control disputes between employer and employee on state railways; and an excise tariff act by which it was attempted indirectly to secure to workmen a share of the profits accruing to employers from protection taxes.

Another incident which has been overlooked by the chief American advocate of the Recall of Judicial Decisions is that the measure of the appeal to the people from the decisions of the courts on constitutional questions was, over a decade ago, presented to the Australian constitutional convention, and although fully debated, received no substantial support except from the member proposing it and was finally withdrawn. It was unanimously agreed that this indirect method of amending or modifying the constitution was inconsistent with the form of government proposed, which gave ample opportunity for all proper amendment by methods requiring deliberate action.

This recent well-considered approval, by an exceptionally intelligent and progressive people of an entire continent, of our

constitutional system, now denounced to the American people by an American of world-wide reputation, is a most significant, though silent, answer to the advocates of the Judicial Recall fallacy.

THE PROPOSED REMEDY OF JUDICIAL RECALL ANALYZED

In less strenuous times, it would seem almost puerile to detail, even to the extent of the above statement, the nature and functions of our government and of its judicial department. The necessity of doing so now only illustrates the truth of the maxim that it is necessary now and then to get back to first principles. It is the first principles of government which are ignored by the advocates of the Judicial Recall. Our government is not one of pure democracy, but is a republican or *constitutional democracy*. It is a government not directly by majorities, whose changing whims shall be enforced directly and immediately from time to time as people may be affected by passion or prejudice. It is one where for self-protection, for the protection of each constituent member of its citizenship, there are self-imposed general rules of conduct, general limitations of powers upon the federal and upon the state legislatures. It is a government by a majority, but by a majority acting through representatives and at the same time restricted within express limits, limits which are unchangeable except through deliberate, well-considered action. These restrictions and limitations are the supreme law of the land and it is the express duty of the courts to enforce their observance. The primary function of the courts is to stand between temporary demands of a majority and the oppression and injustice which must, or at least may, follow unrestrained power. For the preservation of this safeguarding element, the independence of the judiciary is essential. It must not be cringing or subservient to a majority. Its judges must be the "servants" of the people only in the sense that, for the people, they carry out fearlessly, impartially and judicially the duties which are imposed upon them. Any measure which strikes at their independence strikes at the very foundation of the judicial department and at the very foundation of our government itself.

In order properly to perform these functions the element of independence is absolutely essential. Without the quality of absolute independence, the judicial department becomes a mere reflector of public opinion, constantly changing with the temporary whims, passions and prejudices of the majority.

It was the better to preserve the independence of the judiciary that the tenure of office during good behavior was advocated and adopted. Eighty-seven years before the adoption of our constitution, the King of England had the arbitrary power of unseating a judge; but that power was taken away by the Act of Settlement, which secured to the judges their tenure of office during good behavior, subject only to impeachment by parliament. In so much did the Act of Settlement make the government of England take on a feature, republican in form, for the power of removal of judges was given to the representatives of the people, not to the people themselves directly, but to the parliament which was given the duty to hear, try and determine, and which was a body so constituted that it could perform that function.

So, in advocating the constitution and the good behavior tenure, Hamilton said:

The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this all the reservation of particular rights or privileges would amount to nothing.

This independence of the judges is equally requisite to guard the constitution and the rights of individuals from the effects of those ill humors which the arts of designing men or the influence of particular conjunctures sometimes disseminate among the people themselves and which, though they speedily give place to better information and more deliberate reflection, have a tendency in the mean time to occasion *dangerous innovations* in the government and serious oppressions of the *minor party* in the community.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behavior* as the tenure of their judicial officers in point of duration; and that, so far from being blamable on this account, their plan would have been inexcusably defective if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

In order to avoid the danger of subserviency by reason of short-term elections, the Massachusetts constitution, as late as 1870, provided for tenure of office for judges during good behavior, subject to removal by impeachment. As stated in that constitution:

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the

laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and *independent* as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people and of every citizen that the judges of the supreme judicial court should hold their offices as long as they behave themselves well.

It necessarily follows that any measure of reform is obnoxious and unwise in so far as it is antagonistic to these basic principles of our form of government. Any measure which is directly repugnant to these principles is not only inexpedient, but absolutely indefensible. Such is the character of the Judicial Recall, whether proposed in the form of the Recall of Judges or of Judicial Decisions. The Judicial Recall is not remedial, but baneful in its nature. It is not either constructive or progressive, but is destructive and reactionary. This is true whether viewed from a mere theoretical statement of its elements or from the concrete instances of its attempted application. It means a replacement of a properly adjusted, stable, practicable, successful, constitutional government with a form of government shorn of constitutional protective features. It directs all the forces of reform into a downward path leading to further elimination of the very rudiments of our republican system. It would establish the precedent of the yielding up of fundamental principles to the temporary pressure of elements of unrest, instead of insisting upon a constructive adjustment consistently and scientifically worked out in such a way as to save to the American people these protective features of our form of government which distinguish it from despotism upon the one hand, and from disorder, socialism and anarchy upon the other.

The Recall of Judges

The Recall of Judges has, by the very terms in which it is usually expressed and presented, a certain allurements which blinds the superficial observer to its essential vices. Like the Recall of Judicial Decisions, it is founded on the fallacy of human infallibility, on the fallacy of a sort of divine right belonging to the people to have the sovereign authority, ultimately imposed in them, exercised directly upon the command of a majority, and, finally, upon the fallacy that the power exercised by the courts to invalidate unconstitutional statutes, because it operates as a check upon the direct exercise of the people's sovereignty, is, for that reason, an obstacle and a menace

and is a power attained by usurpation. From such origin has the Recall of Judges arisen and is now put forward as the remedy and solution of all the evils complained of. Its impracticability is demonstrated by theory and by experience.

As applied in Oregon and, with some modifications, in other states, the Recall of Judges means that a judge may sit secure for the first six months of his office, and that, if at any time thereafter, for any reason, or without reason, twenty-five per cent of the voters of his district file a petition demanding his recall, stating in such petition in any manner they choose the complaint which they have against him in not to exceed two hundred words, which limited charge shall be placed upon a ballot at an election upon short notice, then the judge, if he does not resign, must go to the polls with the privilege of having placed upon the same ballot his defense in not to exceed two hundred words, and must stand for election against other candidates selected by his opponents, and that, upon such manner of charge and defense, the voters of his district shall decide whether he shall be retained upon the bench or an opposing candidate be put in his place.

The mere statement of the provisions for the recall is sufficient to condemn such a measure not only as repugnant to the proper administration of justice, but as a serious injection into our system of government of a travesty upon justice.

A Summary, Arbitrary and Unrestrained Power

It is not necessary to defend other methods of removal of judges nor to discuss reform measures by which the method of removal by impeachment may be made more efficient. The removal by address of the legislature or by impeachment involves the constitutional elements of a notice to the accused, an opportunity for hearing, a hearing upon the facts and upon the law, and an adjudication in accordance with the fundamental constitutional principles protecting the rights of every person accused of an offence. The recall is not only devoid of all of these constitutional elements, but involves all the vices against which these fundamental protective features were intended. Even if the causes for recall were expressly confined to misfeasance and malfeasance, and even if specific charges should be required, how could it be possible for a proper or sufficient notice to be given to the accused in the limited space of two hundred words?

Suppose the charge be one of incorrectness in a decision involving questions of fact and law, how could a defence to such a charge be made in the same limited space? And, even if issues of fact and law were sufficiently framed, what guaranty is there that any of the adjudicators, that is the voters, who finally pass upon the issues, shall consider these or any issues? The result must be that the very bringing of an indictment by the filing of a recall petition shall be taken by a large number, and perhaps by a majority, as of itself sufficient proof that a change is desirable. [There can be no hearing except by public clamor and upon statements, however false, which are spread broadcast by newspaper and by pamphlet and by rumor, without the slightest pretense of verification even by any form of oath. At the very best, it involves a "trial" upon mere hue and cry, and a decision upon complicated and important issues by the mere arbitrary dictum of a misinformed and prejudiced populace.

But, as to the Recall of Judges, we are not without experience; and the history of its attempted application further demonstrates its vice. It has been attempted to be justified by the claim that in Oregon, for instance, where it has been in force for four years, no abuse of the privilege has arisen and no judge has actually been recalled. But the strongest indictment against the recall comes from its advocates, or its apologists, who instance its application in Oregon and other states. One writer refers to the recall in that state as the "final crowning act to complete the temple of popular government here." He admits, however, that actual recall movements have in many cases been prevented because, under some court decisions and the opinion of an attorney-general, it is considered that additional legislation may be required to allow its operation. But the exceptional cases of its application are sufficient to demonstrate its vice. It is admitted that the recall petitions are circulated by personal, partisan opponents and, in the case of judges, by dissatisfied litigants, and that names are gathered by irresponsible circulators, whose only object is to receive the five cents a name reward for all names procured upon the recall petition.

Neither the petition nor the two hundred words upon the ballot pretend to disclose all the motives nor the chief motives for the recall demand. A municipal officer incurred the hostility of certain property owners, by opening, in accordance with his duty, certain streets which had been illegally closed. The charge against him was simply

that he was "inefficient," "immoral," "untruthful" and "arbitrary." A local war between two banks divided a city against itself and one opposing faction instituted a recall against a hostile city official, charging simply that he was "unsatisfactory" and had "illegally diverted public funds," etc. A city mayor adopted a progressive policy in regard to public improvements and the charge was in vague terms of "improper expenditure," "incompetency," etc. Again, a councilman had furthered an ordinance deemed by the labor unions prejudicial to their interests. He was recalled upon a petition stating simply that he did not "faithfully and efficiently represent" the interests of his ward. The candidate put up to oppose him won in the recall election. In another case where the real issue was the attitude of a councilman with reference to the prohibition law, the charges were of "unsatisfactory administration," "abuse of the emergency clause in the enactment of ordinances," etc., with no reference to the real object of the recall movement. Cases where the recall proceeded or was determined upon the charges stated in the petition and ballot, and where the real basis of the movement was not merely personal or factional spite, are rare occasions. It is admitted that threats of recall are commonly used to bring into line with factional demands the action of administrative as well as of judicial officers.

While no actual recall of a judge has been obtained in Oregon, attempts at judicial recall have been made; and undoubtedly other and successful attempts would have been made had it not been for the supposed necessity for further legislative action in order to make it effective. An incomplected attempt at recall was made against a circuit judge because he sustained as legal the provisions of a city charter allowing the sale of intoxicants. The crucial instance of the application of the judicial recall in Oregon is that instituted against Circuit Judge Coke, who, upon the trial of one McClellan for the murder of a well-known citizen of Roseburg, instructed the jury that if they found certain facts, of which there was evidence favoring the defense, such facts would sustain the claim of self-defense and therefore of justifiable homicide. The instructions of the judge were exactly, in terms and in principle, in accordance with the law expressly stated by the Supreme Court of Oregon in another somewhat similar case. Their correctness is scarcely debatable from a lawyer's standpoint. The jury found the facts as claimed by the defense, and, following the instructions of the court, acquitted McClellan. Local

passion and prejudice against the defendant had been excited to the point of demanding conviction and were turned against the judge whose fairness and judicial qualities had never before been questioned. A recall petition was instituted and objection was made to the nature of the two hundred word charge as not being sufficiently specific to allow proper answer. The attorney-general held that under the law the charge need not be specific and that it might, as in that case, consist of merely a series of epithets applied to the judge complained of, as "incompetent," "unfair" and the like.

It is admitted by candid advocates that these abuses of the recall are inevitable and irremediable and that it is never possible to determine whether an official has been thereby deposed upon grounds asserted in the recall petition or others really the basis of the demand for the recall; for at election he must satisfactorily justify his entire official conduct and compete with the political ambition of other candidates precommitted upon any of the judicial questions at issue, and he must, at the same time, face personal opposition at a time when it has been brought to its most virulent pitch against him and in the midst of greatest feeling of discontent, passion or prejudice induced by ignorance, calumny and wilful machinations. It is admitted also that, as against possible influence in some cases of a salutary nature, there are many palpable instances where the very possibility of a recall has caused obvious "sins of omission" on the part of officials who refrain from enforcing the law, as they would otherwise than for the fear of a recall. Former advocates of the recall now admit that the representative and important factors of the recall, and particularly of the Recall of Judges, are caprice of the public, immaterial and extraneous issues, politics, personal revenge, and deliberate misrepresentation. One Oregon writer, referring to the position of a judge in that state, says:

It is unjust, it is degrading, it is inimical to his independence, that he should be compelled to defend his acts or politics or decisions with one hand and combat political ambition and personal popularity of candidates who may oppose him with the other.

It is a Destructive Measure

In theory and in practice, therefore, the inevitable effect of the Recall of Judges is to deprive the courts of independence. The judge sitting subject to recall, has the threat constantly hanging over him

that a dissatisfied litigant, whether it be an influential individual or a community comprising perhaps the larger part of the constituent voters of his judicial district, may, at any time, without cause and by an arbitrary and summary proceeding, force him to resign or to subject himself to the humiliation of a recall instituted and carried through without any of the safeguarding elements to insure him even the form of a fair hearing or of a just determination. It drags him from his high position of an independent, judicial expounder of the law, to the position of a mere puppet who must perhaps make his decrees and his judgment false to his reason, to his conscience and to the law in order to avoid the degradation brought about by the recall petition.

What is true in the case of one judge is true in the case of the entire judiciary. The Recall of Judges means a dependent, cringing and vacillating judicial department; the destruction of all its essential functions. It is repugnant to our constitutional form of government.

The Recall of Judicial Decisions

The Recall of Judicial Decisions, whether in the form presented by its leading advocate, or in any other form, is but a short cut to the disastrous results toward which the Recall of Judges more indirectly tends. The advocates of the Judicial Decision Recall cannot consistently repudiate the Recall of Judges for the two measures are based essentially upon the same vicious fallacies. So we are told by them that these two measures of Judicial Recall are not inconsistent, but that generally the Recall of Judicial Decisions would be the more effective in practice, and is generally to be preferred. As to the Recall of Judges, they say, "Why, yes, we are for that in any community or state where there is a real demand for it; otherwise not." This means simply that they are for the Recall of Judges for those who want it and they are against it for those who do not want it. As to the Recall of Judicial Decisions, its leading sponsor declares, with shrewdness and adroit phrase which, as he obviously thinks, cannot be clearly grasped and answered, that he stands for the Recall by a vote of the people of only such Judicial Decisions as (1) are rendered by state supreme courts in declaring state statutes unconstitutional, (2) where the litigation is not one between man and man, but only where it concerns some great economic or

social question involving the general welfare of the whole people or of a large class, and (3) where there is not involved the question of the validity of a statute as repugnant to the federal constitution. As to the class of decisions so specified, he would suspend the enforcement of the decree of the state supreme court, and refer the correctness of that decision to a vote of the people of the state. If sustained by such vote, then the decree shall be enforced, otherwise not.

The very suggestion of these limitations upon the application of this proposition of direct judicial adjudication by the people only emphasizes its inconsistency and repugnancy to the very fundamentals of our constitutional republican form of government. A people of a state, which is only a small portion of the field of our national jurisprudence, may become wrought up on some question which is purely local, or which involves the local application of some measure ostensibly meritorious in its general principles; or a state, as a whole, may become unduly agitated to the point of demanding a measure which is, in essence and in effect, manifestly repugnant to the fundamental principles of our government and to the established rights of person and of property. Obviously it is not wise and it is not safe to leave to the people of such locality alone the power of direct, immediate and final adjudication as to issues of constitutional law, the power by direct vote to set aside constitutional defenses established as the supreme law of the entire land as well as of the locality in question. Thus the very first limitation which is suggested for the application of the Recall of Judicial Decisions is illustrative of its entire fallacy.

But, again, it is indulging in a mere delusion to attempt to confine cases which are to be subject to popular adjudication to those which do not arise between man and man and to those alone which involve questions of general welfare. Any lawyer or judge knows, and any layman ought to know and recognize the fact, that almost without exception the great questions which have come before and which must come before the courts, involving considerations of questions of great national importance or of social welfare of the entire people or of large classes of people, arise and are decided in cases between individuals. Great questions of public interest are not decided in any distinct class of cases instituted for the consideration of those particular questions. They arise unexpectedly, as necessarily incidental but controlling, in proceedings between one

man and another, in which at first the direct and concrete object of the litigation is devoid of public interest. It is impracticable to enforce the distinction suggested between cases which shall be and those which shall not be adjudicable by an appellate court, whether such court be one of judges or be one composed of the voters of a whole state.

Nor can decisions subject to popular adjudication be confined to those invalidating a state statute on grounds other than that it is repugnant to the federal constitution. The provisions of the federal constitution already above outlined comprise, in almost the very words of that instrument, the principal provisions embodied in every state constitution. Almost without exception, wherever a state statute shall be found repugnant to a state constitution, it would at the same time be repugnant to the federal constitution, and the question adjudicated would really be the repugnancy of a state statute to the federal constitution. The adjudication by the people of the locality, therefore, if rendered, could not give assurance as to the law of local rights until the same question should have been passed upon by the federal courts. Neither can the adjudication made by popular vote be binding upon even the state courts in another similar instance; for the state courts are sworn to decide cases in accordance with the requirements of the federal constitution and the vote of the people could not change a principle of fundamental law established by judicial judgment.

Any measure by which there is given to the people of a locality the direct power of adjudication upon a constitutional question means the elimination of constitutional limitations and safeguards established for the security of liberty, of person and of property. In place of methods of careful and deliberate amendment of constitutions, it substitutes the spasmodic, vacillating and inconsistent expressions, made from time to time, of the arbitrary will of a majority temporarily in power. It substitutes for decree of judgment under the law, the spasmodic will or caprice of the mob. I use the word "mob," which in similar instances never refers to the people generally, but to large numbers of the people, and it may be at times a majority, acting under the influence of passion and prejudice, and against their own real interest, as distinguished from the people acting through forms and procedures of law, established with provisions safeguarding against the result of temporary passion and prejudices and operating in such a way and under such conditions

as ultimately shall insure expression of the calm, sober, deliberate judgment of the people as a whole. The term so used is not a denial but an affirmation, under a constitutional democracy, of a sovereignty vested in the people.

It is unnecessary to give instances of the opportunities of the abuse of the power of popular adjudication upon constitutional questions. We may not overlook, however, the instance of Wisconsin where, preceding the year 1911, a state-wide agitation had been made by an appeal to the passion and prejudice of the voters, to demand a statute by which a large class of property owners within the state, whose title to their property had been confirmed by repeated adjudications of the state and federal courts, should have their property taken from them by a legislative fiat and, by the same token, established in the state itself for general public use. The movement, denominated in Wisconsin as "progressive," was successful and the Wisconsin legislature of 1911 passed the now notorious water power act, the provisions of which, within a year were each and all, including the spirit and purpose of the act itself, declared unconstitutional by the Wisconsin supreme court, as repugnant to several provisions of not only the state but of the federal constitution. No lawyer or judge, acquainted with the first principles of the law of property rights or of constitutional law, will pretend to criticise that decision. Nevertheless, such was the prejudice which had been aroused throughout the state in favor of the confiscatory statute, there is no doubt that, if the Recall of Judicial Decisions had been there applicable, the people of the state would have voted within the time required for such a vote, and probably would to-day so vote, that the decision of the Wisconsin supreme court should not stand. By such popular adjudication, if it had been made in Wisconsin, the statute in question would have been sustained and would have remained effective until the question could be brought before the federal supreme court in the same or in a similar case; with the result that that which is one day property in possession of its owners would, for a long period become not their property but would be retained in the possession and control of the state; and after the end of a further period, when judicial judgment under the law finally reigns in place of the drastic and arbitrary decrees of popular passion, the same property would again have been returned to its legal owners.

It is futile to claim that the establishment of the Recall of Judicial Decisions would be consistent with the retention of constitutional government, or that its purpose and effect are any other than to eliminate constitutional safeguards. Even in attempting to answer the charge of President Taft that the proposed new system "would result in suspension or application of constitutional guaranty according to popular whim," which would destroy "all possible consistency" in constitutional interpretation, ex-President Roosevelt expressly referred, in his Carnegie Hall speech of March 20, 1912, to the system criticised as one "amending or construing, to that extent, the constitution,"—that is, to the extent of leaving the enforcement of any constitutional provision to popular vote. The supporters of his proposition, including a well-known publisher and editor, frankly assert that the people within the jurisdiction of any constitution, should, as sovereign rulers and as the makers of the constitution itself, have the power at any time by majority vote to amend, that is to "disregard," such constitution, and that the Recall of Judicial Decisions is sufficiently justified because it will have precisely such effect.

The system of a Recall of Judicial Decisions is inconsistent with our system of government. These two conflicting systems can not exist together. As stated by the Honorable Elihu Root in the speech which he delivered as president of the New York State Bar Association on January 19, 1912:

We must choose between having prescribed rules of right conduct, binding in every case so long as they exist, even though there may be occasional inconvenience through their restraint upon our freedom of action, and having no rules at all to prevent us from doing in every case whatever we wish to do at the time. We cannot maintain one system in part and the other system in part. The gulf between the two systems is not narrowed, but greatly widened by the proposal to dispense with the action of a representative legislature and to substitute direct popular action at the polls. A sovereign people which declares that all men have certain inalienable rights, and imposes upon itself the great impersonal rules of conduct deemed necessary for the preservation of those rights, and at the same time declares that it will disregard those rules whenever, in any particular case, it is the wish of a majority of its voters to do so, establishes as complete a contradiction to the fundamental principles of our government as it is possible to conceive. It abandons absolutely the conception of a justice which is above majorities, of a right in the weak which the strong are bound to respect. It denies the vital truth taught by religion and realized in the hard experience of mankind, and which has inspired every constitution America has

produced and every great declaration for human freedom since Magna Charta—the truth that human nature needs to distrust its own impulses and passions, and to establish for its own control the restraining and guiding influence of declared principles of action.

No Justification by Necessity for Recall of Judicial Decisions

The occasion for the suggestion of the Recall of Judicial Decisions, as outlined by its chief advocate, lies in the peculiar fact that in cases where a state statute is claimed to be repugnant to the federal constitution, and its validity is upheld as against such claim, then such decision is directly reviewable by the federal supreme court; whereas, if the decision is against the validity of the statute and in favor of the claim of its repugnancy to the federal constitution, such decision is not so reviewable. This is because of the peculiar provisions of the act of congress by which the appellate powers of the federal supreme court are fixed; and the distinction is undoubtedly made so as to avoid as far as possible an unnecessary increase of the number of cases which would otherwise come before the federal appellate court. For a long time, representative lawyers of the country have considered this discrimination in allowing appeals as unwise; and the American Bar Association and many leading lawyers have been urging upon congress the desirability of changing the judicature act so as to render possible the review by the federal supreme court of all decisions of a highest state court, which determine to be either valid or invalid a state statute on the issue of its repugnancy to the federal constitution. It is for the people through their representatives in congress to say whether the remedy which is thus possible shall be adopted. It would be a logical, efficient and direct remedy for any evils for the cure of which the Recall of Judicial Decisions is urged. Therefore, besides objections to the Recall of Judicial Decisions on the ground of the vice, inexpediency and danger of such a measure, it is further shown to have no justification on the grounds of emergency or necessity, for there is open an easy, direct and constitutional remedy for all the evils which are complained of as a basis for that measure.

The Judicial Recall is Unrepublican

The federal constitution provides (Article IV, Section 4), "The United States shall guarantee to every state in the Union a republican form of government."

It is obvious that the Judicial Recall measure could not apply in any particular state without express provisions for that purpose in the state constitution. So far as state application is concerned, it must first be adopted as part of the state supreme law, as a feature of state government. The federal constitution contemplated a union of states having as their fundamental principles and laws of government only those which are and which should at all times remain essentially republican in form. And this provision of the constitution was adopted to protect, not merely against intrigues by foreign powers, but also against the ambition and intrigues of local agitators. Its purpose was to keep uniform, within specified limits, the local state governments. As pointed out by Madison in the *Federalist*, explaining the purpose and force of this provision:

But who can say what experiments may be produced by the caprice of particular states, by the ambition of enterprising leaders, or by the intrigue and influence of foreign powers?

As long, therefore, as the existing republican forms are continued by the states they are guaranteed by the federal constitution.

The only restriction imposed on them is this, that they shall not exchange republican for anti-republican constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

It is not left, therefore, to the caprice of each state, from time to time to determine whether it shall adopt features of government which are un-republican or to repudiate entirely the republican form.

As pointed out also by Madison in the quotation of his observation upon the nature of a "pure democracy" above given, a yielding up to the direct vote of the people, as in pure democracy, is to be avoided as repugnant to our republican form of government, a government under which the people act through their representatives or through representative departments, through whose carefully formulated deliberations and judgments, not the expressions of the temporary spasmodic will of the majority, but the deliberate, consistent and logical judgment of the entire sovereign people, refined and corrected by careful study and consideration by individuals or tribunals adapted to that purpose, may be enforced; and that, too, consistently with the existing provisions of the fundamental supreme law as laid down in the constitution. Not only is such representative element an essential feature of our republican form of government, but another and even more indispensable feature is the maintenance

of untrammelled courts of justice presided over by judges, who, during their terms of office, shall be independent, not only of the legislative and executive department, but independent of even the sovereign power of the people.

No state has been admitted having a recall provision in its constitution, and, thanks to the sturdy, judicial and fearless attitude of President Taft, the precedent has been set for the refusal by the national government to recognize either the wisdom or constitutionality of such a state constitutional provision. That some states have been driven or induced to adopt such a constitutional provision is no justification for similar action by other states. No republic of the modern civilized world had ever experienced even the proposition for the Judicial Recall, much less its adoption as a constitutional provision, until, within the past twenty years, its advocacy was started in Oregon, where it was adopted in 1908. Even the republics of Switzerland, the birthplace of modern direct popular government, have not failed to keep their judicial departments free from the effects of popular clamor. It was left to their disciple, Oregon, to adopt the precedent for modern times of this experiment of radicalism. And the experiment has not only failed, but within the four years of its existence, has demonstrated that it is a weak, inefficient, impracticable, vicious measure.

In no case has a state constitutional provision for judicial recall been upheld as not directly repugnant to this federal constitutional provision. There are reasons compelling the conclusion that, when such question shall arise before the federal court, it will not be left undetermined as being a mere political question. Whatever may be the ultimate methods of procedure by which the question shall be determined and the result of such determination enforced, the conclusion is manifest that the Judicial Recall, whether in the form commonly proposed for the Recall of Judges or for that of Judicial Decisions, is unrepugnant in its nature, that it involves a return to the tyranny of democracy, as illustrated in the rule of the demos of ancient Athens, and would be more fruitful of dangers and evils than a change which looked directly to the establishment of a monarchy.

A Waning Cause

It is fortunate, perhaps, that local conditions in isolated localities, exciting the people of certain states to a spasmodic disregard

of fundamental principles, have induced sporadic instances of the formal adoption of the Judicial Recall, in the form of the Recall of Judges. Its adoption by Oregon alone was generally regarded as a local and temporary lapse from reason, and it was not until the example was followed by California and particularly by Arizona, that thinking people were awakened to the knowledge of the real dangers threatened by a fallacy once isolated but which subsequently was found spreading most insidiously and with great celerity. During the past twelve months, no subject has received such attention, whether in non-partisan discussions or in political debates. Its injection into politics is to be deprecated for it cannot from its very nature be properly an issue of national politics. So far as its practical scope is concerned, it is purely a question of state policy or state caprice. So far as the nation as a whole is concerned, it is a question of the science of government and of constitutional law. Comparatively few representative leaders and, almost without exception, none who are really schooled in the principles of jurisprudence, law and government, have been found among its advocates. On the contrary, from every bench and bar and associations of lawyers, from the whole membership of a learned profession entitled to authoritative expression of opinion on this question, have come deliberate protests against this greatest of modern fallacies. And not without results. The sturdy, fearless, statesmanlike action of President Taft in vetoing the Arizona statehood bill is bringing more and more comments of approval from even his political opponents. His reasons, as stated in his veto measure of August 15, 1911, and in his consistent opposition to the Judicial Recall since, have had most beneficial effect in demonstrating to the satisfaction of thinking people that the issue involved in the Judicial Recall is not one of politics, but one of a deliberate choice between a constitutional and an unconstitutional government, between a republican or constitutional democracy and a pure democracy unrestrained by safeguarding provisions essential not only to efficiency but also to permanence. The influence of all this opposition upon legislators, and upon the average citizen unskilled in the profession of law, is apparent. In April, 1911, the Minnesota house of representatives adopted the Recall of Judges by a large majority. At the special session in June, 1912, the same house, with its membership unchanged, expressly repudiated the Recall of Judges by an almost

unanimous vote. Its wisdom and practicability are now disputed or at least questioned by a large portion of its former adherents in the State of Oregon. The past year's campaign against this fallacy has been one of education. Hue and cry, sounding phrases and subtle *ad hominem* appeals to the voters as sovereign, however insidious, are met more and more with the spirit of sober reflection and by minds of a people who are now better informed and who are benefiting by the instructions they have received.

Its elimination as even a pretended issue of national politics is now fortunately assured. The personal views of President Taft, are too well known to require quotation; and the party, of which he is the representative head, is now before the people with the express statement in its platform that the Recall of Judges is regarded as "unnecessary and unwise" and declaring that:

The social and political structure of the United States rests upon the civil liberty of the individual; and for the protection of that liberty the people have wisely, in the national and state constitutions, put definite limitations upon themselves and upon their governmental officers and agencies. To enforce these limitations, to secure the orderly and coherent exercise of governmental powers and to protect the rights of even the humblest and least favored individual are the function of independent courts of justice. The republican party reaffirms its intention to uphold at all times the authority and integrity of the courts, both state and federal, and it will ever insist that their powers to enforce their process and to protect life, liberty and property shall be preserved inviolate. An orderly method is provided under our system of government by which the people may, when they choose, alter or amend the constitutional provisions which underlie that government. Until these constitutional provisions are so altered or amended, in orderly fashion, it is the duty of the courts to see to it that when challenged they are enforced.

The same platform recognizes that the remedies for existing evils properly lie with the legislative departments by means of further constitutional measures of reform in legal procedure and in provisions for the non-partisan selection of judges. In the words of the platform:

That the courts, both federal and state, may bear the heavy burden laid upon them to the complete satisfaction of public opinion, we favor legislation to prevent long delays and the tedious and costly appeals which have so often amounted to a denial of justice in civil cases and to a failure to protect the public at large in criminal cases.

Since the responsibility of the judiciary is so great, the standards of judicial action must be always and everywhere above suspicion and reproach. While

we regard the Recall of Judges as unnecessary and unwise, we favor such action as may be necessary to simplify the process by which any judge who is found to be derelict in his duty may be removed from office.

The eminent citizen selected as the representative head of the democratic party, Governor Woodrow Wilson, has recently stated his position on the Judicial Recall as follows:

The Recall of Judges is another matter. Judges are not law-makers. They are not administrators. Their duty is not to determine what the law shall be, but to determine what the law is. Their independence, their sense of dignity and of freedom is of the first consequence to the stability of the state. To apply to them the principle of the recall is to set up the idea that the determinations of what the law is must respond to popular impulse and to popular judgment. It is sufficient that the people should have the power to change the law when they will. It is not necessary that they should directly influence by threat of recall those who merely interpret the law already established.

And his party now goes before the people urging, not disregard of law, but law reform through necessary and proper legislative measures. In the words of its platform:

We recognize the urgent need of reform in the administration of civil and criminal law in the United States, and we recommend the enactment of such legislation and the promotion of such measures as will rid the present legal system of the delays, expense and uncertainties incident to the system as now administered.

The fallacy of the recall, as applied to courts or to decisions of courts, is meeting its own inevitable self-defeat through the increased attention, which its advocacy has forced to the nature and functions of our constitutional government and to the real character, futility and dangers of any remedy, under whatever label it may be presented, containing the destructive ingredients of the Judicial Recall.

DANGERS THAT LURK IN THE RECALL OF THE JUDICIARY

BY JAMES A. METCALF,

Editor, *The Dawson County Review*, Glendive, Mont.

The adoption of a constitutional amendment making the "Recall" applicable to the judiciary would mean the substitution of the popular will, with its unavoidable temporary uncertainties, for the judicial determination of the every-day causes which now engage the attention of the courts.

In spite of their praiseworthy faith in the rectitude of the ultimate conclusion of the people; and no matter how logical or plausible their arguments in behalf of this revolutionary device for reversing the expressed will of the electorate in regard to officials in legislative or administrative position, the most ardent advocates of the recall must admit that, when used as a weapon for intimidating the judiciary, it involves the gravest possible dangers to the stability of constitutional government.

From the very nature of the functions they perform, the judges must be removed from prejudicial influences of whatsoever character. Granted that the courts have been influenced by the money power, and that a different condition must prevail in order to guarantee the security of popular rights, yet what good can be accomplished by swinging to the opposite extreme? Two wrongs do not make a right. And there must be a happy medium wherein the rights of all shall be fully respected and protected. Our sacred duty as American citizens, and every consideration of personal and general welfare impel us to seek that middle ground of safety, rather than unnecessarily fly to some radical extreme.

If we can devise some general reform, whereby we shall limit the power of the courts in the determination of the question of constitutionality, we shall have abolished the real evil of "judge-made law," with its present power of substitution for the will of the people, without in the least impairing the ability or courage of the courts in the daily administration of justice between man and man. Let us add thereto some limitation to be placed upon technical

jurisprudence and its power to obscure the real issues or prevent the attainment of justice and equity, and we will have corrected our worst evils without disturbing the general course and conduct of civil affairs.

Instability of Government—Then Anarchy

Out of the adoption and enforcement of the recall of the judiciary promises to issue a threatening array of iconoclastic agencies that are of serious portent to free government. First must come a period of uncertainty; then of wavering; then of fear; then of time-serving; then of debauchery induced by a system under which the dishonest jurist might well say: "Whatever step I take, I am apt to be recalled. Why not profit by the situation while it lasts, and sell myself for a good price?" Given a few years of the recall—and then anarchy!

For example, imagine the instability of government that would have prevailed under the recall system during the past ten years, during which period our courts have been trying to reach a proper interpretation and enforcement of the laws governing industrial monopolies. What judge would have dared take a strong stand, one way or the other, without facing the certainty of being recalled to private life? You may at once advert to the fact that these years of effort and great expenditure of time and money in the courts have not brought us to any definite conclusion of the corporation question. But, on the other hand, the frequent disruption of the courts through recalling of judges would have accomplished no good, and the conclusions eventually forced by fear from a spineless judiciary might have been far from right or just or safe. They could hardly be called "conclusions of law" under such circumstances. I do not believe these are either fanciful or far-fetched pictures of scenes that might be enacted under a recall system.

"The Complexity of the Law" is Unavoidable

It is eminently right and proper that popular discussion and expression of preference should have its effect upon the courts; and it does to a very great extent. But these great problems, with their infinity of detail and ramifications of principles, are not proper subjects for superficial or popular determination. The public mind, awakened to a full moral consciousness, grasps the great principle of things

in its superficial entirety, but is lost in the intricacy of its legal complexity. The people know what they want, and should have it; but the consideration of orderly procedure is of paramount importance. Some will doubtless say, at this point: "Abolish the complexity of the law entirely. Bring it within the comprehension of the laity. The intricacy of the law is the very thing that gives it the character of a maze, within which the artful attorney wanders at will to the subserving of special interests, while the rights of the people get wholly and hopelessly lost."

There seems to be much justice in this complaint. If directed to a right remedy, its insistence cannot be denied. But its misdirected gaze loses sight of the fact that the body of the law is not an arbitrary arrangement of set rules and forms, which can be turned or twisted at will, or wiped out of existence and replaced by others in a moment of time. The judicial system is a part of the bone and sinew of the nation. The lines of the law are inextricably interwoven with the very network of civilization. The law has grown as the world has grown. It has developed just as fast as human intelligence has expanded. It is wholly inseparable from the web and woof of civil government. When the law weakens, liberty totters to its fall.

The very complexity of the law is of inherent necessity. Its every principle is a mile-post on the arduous ascent out of the valley of ignorance and superstition to the sunlit mountain-top of enfranchised intellect. Its every phase reflects the light of some victorious battle fought in the name of human happiness. Its every development marks a new step in the progress of mankind; and yet the old tenets must be retained, the precedents must be preserved, because human nature in the ultimate does not change with the passing of time, and every just decision of the courts must prove its consistency and authenticity by adherence to the principles that have been developed and perfected through countless racial struggles, out of which man has grown upward toward the perfect stature of divinity.

Certain well-defined principles of jurisprudence, when in action, are not necessarily then and there traced to their origin, nor obliged to travel wearily backward through ages of history in order to fetch forward their credentials. They have been such frequent visitors to the courts as to become well known. Yet each must be ready

at all times to stand the test of conformity with practice and precedent, and to survive a rigid application of all the rules of the common and statutory law.

How utterly vain to hope or expect that these infinite details, which provide a task of impossible comprehension even in a lifetime of exclusive study and research, should be brought immediately within the popular understanding. And if the people cannot comprehend and follow the full workings of the law, they are certainly not qualified to criticise the individual decisions of the courts, nor to declare the rightful deposition of the just or unjust judge who offends, as the case may be.

However, we must make an exception here, and must distinguish between the existence or survival of a law and its application to some particular state of facts or circumstances. The right to say what the law shall be resides solely in the people; the function of its application to each separate case belongs to the courts. The people, exercising the power of popular government, make the yardstick of the law; the courts will do the measuring, but must not change the unit of measurement. The distinction seems to be clear, unequivocal, thoroughly just and founded upon a proper conception of representative government.

Justice Must be "Judicially" Administered

Though we have superimposed many innovations upon jurisprudential practices in these later days, we must still yield to the immortal Blackstone the distinction of having evolved the most comprehensive and desirable definition of a court, namely, "a place where justice is judicially administered."

It may be taken for granted that American citizenship, as a whole, desires the courts of the land to furnish an exemplar of Blackstone's definition. Failing at times to realize such a desire, and recognizing the existence of evils which should unquestionably be eradicated in some manner, we are prone to a radical reformation that seems necessary only because we have blamed the courts too severely for the existence and spread of a general political or civil malady. Upon them we have undoubtedly heaped a greater responsibility than they deserve or merit for the failure of the laws to produce the proper effect in the preservation of popular rights.

Much, if not all, of the sanction of the law depends upon an

enlightened public opinion. Without a militant supporting sentiment back of it, no law can be successfully enforced. The courts can be no better, no more conscientious, no more patriotic than the civil environment within which they exist. And it is subversive of political principle, detrimental to right thinking and inimical to free government for us to ascribe undue discredit to the courts. Nothing in history nor in present conditions warrants the contention that any considerable portion of the judiciary is venal or corrupt. The American bench has been occupied by a succession of high-minded, noble-spirited, warm-hearted jurists—men who have given a faithful interpretation to the laws and have unfalteringly preserved and protected the constitution as the divinely-inspired magna charta of American liberty.

Not Only the "Special Interests" are Concerned

It is true that corporation-controlled courts have been a disgrace to the United States in notable instances. But we must also remember that the "special interests" have reached out and controlled not only the judicial, but also the legislative and administrative branches of government.

Fully recognizing the evils that have fastened themselves upon our government, and being fully aroused to the necessity of doing something to purify politics and cleanse the courts—and that right speedily—our greatest danger to-day lies in the tendency to resort to too radical reforms. And of the proposed innovations of doubtful expediency, the recall of the judiciary stands forth as the most dangerous. We have other ways of making the courts amenable to just and patriotic considerations, and to wean them away from illicit alliances, than by suspending above them this sword of Damocles. The power of impeachment has not waned, and it still stands as a powerful weapon in the hands of an enlightened and conscientious commonwealth.

And we must not for a moment forget that the courts we complain of control not only the interpretation of the laws affecting the "special interests," but that they have always been and still are the final arbiters of our constitutional rights—the very last bulwark of our liberty. And for the sake of correcting one class of evils, which can undoubtedly be remedied in some other and safer manner, we cannot afford to imperil any established safeguard of

our "life, liberty and the pursuit of happiness" by the substitution of a fickle popular will for the judicial administration of justice through independent, high-minded courts of law such as we now undoubtedly possess.

The Judicial Referendum

In view of very recent political discussions, there should be added hereto a brief consideration of a proposed judicial reform which is sometimes referred to as "the recall of decisions," but which is more properly entitled "The Judicial Referendum."

There is no identity of operation or effect between the recall of judges and this proposed judicial referendum, and the two should not be confused in consideration. The one is demanded as an available weapon to be wielded by popular frenzy; the other is desired to be used as a well-considered, thoughtful means for insuring genuine popular government in finality.

The judicial referendum does not propose to disturb the judges in the exercise of their ordinary functions, nor in the determination of the multitudinous causes which make up the routine of the courts. It will not prejudice the decisions of the judges through fear or threat of the imposition of a personal penalty; in fact, its operation would have no direct relation to the personnel of the courts. In this respect it is entirely different from the recall, and it must not be judged from the same viewpoint. The dangers that pertain to the latter are entirely absent from the former.

Question of "Constitutionality" Only

The judicial referendum would have to do with the final determination of the constitutionality of the laws only. I can well understand that even this suggestion is a shock to the long-cherished doctrine of the infallibility and inviolate integrity of supreme court decisions. But let us note that the judicial referendum would simply proceed upon the undoubtedly correct theory that, in a genuinely popular government, the will of the people of right should be, and in our own government eventually must be, supreme in all things. It must be admitted in theory, even though the proposed practice be dubiously considered, that the people are entitled to clearly express their will and by some means make the same effective in every branch of the government. Therefore, if the courts shall

determine, through resort to technicality or pure precedent, that a certain law is unconstitutional and shall thereupon suspend its operation, even though such law would seem to have been duly enacted by the people or their accredited representatives, it is contended that there shall still reside in the people, as of inherent right, the power to determine, by means of a judicial referendum invoked by petition in an orderly manner, whether such law shall finally stand in legal sufficiency and sanction.

Not a "Recall of Decisions"

It is not proper to name such a process "the recall of decisions," which phrase does not clearly establish its proper relation to the general scheme of government. It is of higher status than such a description would indicate. It is in reality the re-enactment of a law that has come into conflict with judicial conservatism. It constitutes a test of the certainty of the popular will through a required re-expression thereof and is in effect a broad application of the principle underlying the initiative and referendum. It has been described by some as a quick and easy means for effecting a constitutional amendment, but that again places it on a too low plane, for it occurs to me that legislation which had survived the adverse action of the supreme court and had been thereupon re-enacted into law by the direct vote of the people would possess even a greater sacredness and sanction than the constitution itself, whose title to veneration has hitherto rested largely upon its undisturbed existence as the generic, formative law of the land.

No Disturbance of the Courts

While the recall of judges would proceed with demoralization of the courts and would weaken the entire body of the law because of the resultant impotency of its interpreters and their constant fear of popular revenge, the operation of the judicial referendum would in no sense disturb or interrupt the ordinary course of jurisprudence, nor would it surround the judges with any greater uncertainty than now confronts them in the possibility of review and reversal by the court of final resort.

I do not apprehend that the judicial referendum system would abolish the supreme courts or lessen their usefulness. By its introduction we would simply erase from our present judicial system,

the doctrine of the inviolability of decisions on constitutional questions, and would substitute the people as the court of final appeal, as the residual right of democracy. Full consideration would still be given supreme court decisions. In a majority of cases such decisions would undoubtedly stand without question, for they would be more carefully and conscientiously considered than is now sometimes the case. If any faction proposed to overturn a supreme court decision, the ultimatum of the court and its accompanying reasons would exert a strong moral effect for the preservation of peace and good order. The invocation of the judicial referendum would take time, and through it all, with platform, press and pulpit at work, no ill-considered or dangerous action would result.

A Serious Question to Answer

As we consider this whole problem we are faced with the serious question whether conditions generally do not warrant the people in the resumption of that power which they long ago delegated to their supreme courts, and which they are forced to believe has not always been rightly used. This is no threat to rob the courts of a rightful and inalienable possession. The people have given; the people can take away.

Finally, be it said: These suggestions do not profess to approach a measurable discussion of the judicial referendum, which is a great subject worthy of separate and careful treatment, but are simply designed to direct attention to a distinction which should be made between political doctrines prevailing at this time.

THE POSITION OF THE JUDICIARY IN THE UNITED STATES

BY ALPHEUS HENRY SNOW,
Attorney-at-Law, Washington, D. C.

At the present time two circumstances are directing public attention to the position which the judiciary holds in the American political system. The initiative, the referendum and the recall are extending widely, and the prospect is that they will soon become prevalent throughout our states. It is clear that if these methods of controlling governmental action by popular vote should be carried sufficiently far, they might be used so as to extinguish the power which our courts have to treat as void any governmental action which is in excess of the powers granted by our written constitutions. At the same time that the position of our judiciary is thus endangered by the coming of these new forms of political action, its position has been seriously weakened, in the eyes of many of our best citizens, by its own action in exercising its power to hold laws unconstitutional. It is probably true that some of our courts have exercised this power in a retrogressive manner; that is, in such a way as to interfere with the people in their proper development and progress, and with the nation in its fair competition with foreign nations. Thus the position of our judiciary in our political system is at the same time endangered from without and from within. If it be true that our courts are proving themselves unable properly to perform the high and extraordinary functions which we have laid upon them, those who advocate the extension of the initiative, the referendum and the recall are entitled to be heard with attention. If our system is sound, and is merely operating badly for the moment on account of some specific defect or ambiguity in our constitutions, or because we are passing through some temporary social or economic phase or condition, or because of the too great rigidity of the legal mind as now trained, the initiative, the referendum and the recall as remedies for the difficulty must be considered along with other possible remedies. If it be true that our system has broken down by reason of the inability of our courts to bear the burden placed on them, the

next most feasible plan is that of "responsible government" under an unwritten constitution, as it exists in other countries, and to this the initiative, the referendum and recall, if applied in a wide sense, seem necessarily to lead.

It therefore becomes necessary to examine the philosophical and legal basis on which our system rests, and to make up our minds whether our system is reasonable and practicable and as good as or better than any other. If we conclude that it is, and that therefore the functions which we have given our courts are reasonable and capable of being properly performed by them under all ordinary circumstances, it will be necessary to attempt to discover the reason why some of them have happened to make the decisions which are regarded as retrogressive. If we succeed in discovering these reasons, it will particularly be necessary to consider how far the initiative, the referendum and the recall can be used, if they can be used at all, as a means of remedying any aberrations of our courts in performing their superintending and nullifying functions.

An attempt will first be made, therefore, to state the philosophical and legal basis on which our system rests. The simplest way seems to be to state the propositions of politics and law which underlie our system, beginning with the most fundamental and proceeding by successive steps to the various derivative propositions, illustrating each, so far as space will permit, by reference to historical facts.

The fundamental proposition upon which our system rests, as it would appear, is, that governments are the agents of the governed. There are, as history, experience, and philosophy show, in the last analysis, only three forms of government—the patriarchal form, the agency form, and the imperial form. In the patriarchal form governmental power is conceived of as derived from a source external to the people governed, that is, from God, and is devolved from above downward upon subordinate officers and subjects. In the agency form, governmental power is conceived of as derived from the people governed, who delegate limited powers to officers who are neither above nor below the people, but are on an equality with the people as contracting parties and agents. In the imperial form, all power is conceived of as derived from the people governed, who are assumed to have conveyed all their powers to a ruler or government, so that the ruler or government thus has a power equally absolute with

that of a patriarch and devolves his or its power from above downwards upon subordinate officers and subjects.

When, therefore, it is said that our system depends upon our acceptance of the proposition that governments are the agents of the governed, it is the same as saying that we have chosen to adopt the agency system of government and have not allowed ourselves to be subjected to the patriarchal system or to the imperial system.

It becomes important, therefore, to inquire what is necessarily involved in the acceptance of this fundamental proposition—that is, to inquire what are the fundamental principles of agency. About this there is no difficulty. Agency is one of the most common and necessary of human relations. The fundamental principles of agency have been settled for at least fourteen centuries. These principles were summed up in the civil law by two maxims. The first of these was, *Obligatio mandati consensu contrahentium consistit*; a translation of which is, "The powers of an agent are derived from the consent (or agreement) of the contracting parties." The second was, *Rei turpis nullum mandatum est*; a translation of which is, "There can be no agency to do an unjust (or wrongful) act." The meaning of these two maxims is, that the agent has no powers except those delegated to him by the principal and accepted by the agent in the agreement of agency made between them, and that any acts done by the agent in excess of these powers are void as to the principal; that even if the agent acts within the powers thus delegated to and accepted by him and agreed to by both parties, yet if in so acting he does an unjust or wrongful act to any one,—as distinguished from an act of negligence,—the wrongful act is in excess of his powers, and is void as to the principal; and that even if the principal and the agent agree that the agent shall have power to do wrong or injustice, the agreement is void as a contract of agency and operates only to make the principal a wrong-doer jointly with the agent, in case the agent does the wrong or injustice. When we say, therefore, that our political system is based on the agency theory, we mean that our governments have no powers except those which are delegated to them by the people and accepted by the governments by acceptance of office, and which are agreed to between the peoples and the governments; that even if our governments act strictly within the letter of the powers granted, they have no power in exercising those powers to do injustice to any one; and that if the people

should attempt to delegate to any of our governments a power to do injustice, the attempted delegation of power would be void, and the governments would have no power to do injustice.

The first great public document in which this theory was foreshadowed was Magna Charta. This great charter, granted by King John to the Barons in 1215, was made, however, under such circumstances and was couched in such language that it required interpretation. In subsequent confirmatory charters granted by the English kings to the people by act of parliament, these principles gradually became more clearly stated. The Reformation, by emphasizing the importance of the individual and his direct relationship to God, gave a wide extension to the idea that all institutions, including the institutions of government and church, are for the benefit of the individual; and it was a natural and necessary conclusion that all the persons concerned in the management of institutions and the institutions themselves were agents of those for whose benefit they existed. The people of Continental Europe, however, long accustomed to regard themselves as members of clans or armies, and to regard the head of their nation as invested with patriarchal or imperial power, were not able to apply this theory successfully against the opposition of those attached by conviction or interest to the patriarchal or imperial theory.

The principle that governments are the agents of the governed was recognized in the charter granted by the king in council to the Massachusetts Bay Colony in 1629. By that charter it was provided that the freemen of the colony should meet in general court every three months, and that at one of these courts, called the court of election, all the officers of the colony should be elected. In the Massachusetts Body of Liberties of 1641, this system was established by statutory provision, and it was also arranged that officials might be recalled for cause at any of the general courts other than the court of election by majority vote upon cause shown.

The same right of the citizens of the colonies to elect all their own officers was recognized in the Rhode Island charters of 1643 and 1663, and in the Connecticut charter of 1662. The colonies regarded these charters as the ones which really expressed the full extent of their political rights, though other colonial charters provided for appointment of the governor, and in some cases the governor and upper house, by the King of Great Britain in council.

The Continental Congress was from the outset a congress of agents of the colonies. When that congress adopted the Declaration of Independence, it committed the United States for all time to the agency theory. It was declared that governments are instituted among men for the benefit of the individual and primarily to protect and preserve each individual in the reasonable exercise of those attributes of life, motion and prehension which are common to all human beings and which are essential to the existence of every human being. It was declared that each individual has a divine right, by reason of the fact that all are equally created by God with these attributes, to life, liberty (motion) and the pursuit of happiness (prehension). "To secure these (divine) rights" of the individual, the Declaration asserts, "governments are instituted among men," evidently meaning either by their consent or by external force. However governments may be instituted, whether by consent or force, the Declaration declares, they are the agents of the governed. The words are: "That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." This clearly means that governments have no power to do any unjust acts, and that all their powers to do just acts are derived from the agreement of agency between the government and the governed. The expression "deriving their just powers from the consent of the governed" seems clearly to be a combination of the two maxims of the law of agency above quoted, that the powers of an agent are derived from the consent (or agreement) of the contracting parties, and that there can be no agency to do an act which is unjust or wrongful to any one.

The second proposition on which, as it would appear, our system is based, and which is a derivative from the first, is, that states are corporations. If governments are the agents of the governed, the whole organization consisting of the government and the governed permanently operating together as one mechanism or body, is an artificial person or corporation. The people governed are in this view the members of the corporation, and the government the officers and board of directors of the corporation.

The principles of the law of corporations are those of the law of agency. The corporation, regarded as an artificial and legal person, is the agent of its members. Its powers are those which are agreed to between it and the members; the members delegate specific powers

to the corporation, and the corporation accepts them. The corporation has no powers except those delegated by the members, and even if it acts within the letter of those powers it has no power to do an act which is unjust or wrongful to any one. Any act of a corporation in excess of its powers is void. Even if the incorporators or the state should attempt to give the corporation power to do injustice to any one, such attempted delegation would be void, and the corporation would have no power to do injustice.

Prior to the Reformation the conception of a number of persons united for a common purpose under a governing body of agents selected by them, as an artificial person which was itself the agent of the members of the corporation, though not unknown, was little understood or applied. Religious, charitable and educational corporations existed, but cities, towns and trade-guilds furnished the principal examples of political or industrial corporations. So far as there was anything corresponding to the modern territorial state, it was not conceived of as a corporation, but as a family or clan. The city-states and small republics of Europe, however, to some extent recognized themselves as corporations. The possibility of regarding territorial communities as corporations was also made manifest when the republics of Venice and Genoa, in the fourteenth and fifteenth centuries, chartered corporations for trading and banking purposes with powers of government over the colonies of merchants on the shores of the Black and Ægean seas. This practice was soon followed by France, Holland and England. It only needed that the colony should grow strong enough to control the corporation for the colony to consider itself as the corporation and to elect its own officers. The idea of a "commonwealth," or a corporation on a fixed territory having for its purpose the common weal of the persons there residing and inhabiting, was the logical result of the social, economic, political and religious ideas and theories which the Reformation brought forth. Granting that the development of the individual is the important thing to be considered both in theology and politics, and that all institutions are for this purpose, it follows that it is not only the right but the duty of each individual to assist in molding the institutions which are for his benefit. By conceiving of a group of persons united for a common purpose as a personality outside of and distinct from them all, and as the agent of all, the institution was brought under the control of the group, the artificial personality being the agent of the group.

At the time the colonization of New England began in 1621, the corporation theory of the state was just beginning to take strong root in England. This theory was opposed by the ruling classes as a whole, though some of the nobility and a great part of the well-to-do farmers and professional men believed in it. Those who emigrated from England to America at this time did so because they believed that governments are and of right ought to be the agents of the governed, and that states are and of right ought to be corporations. In the "Mayflower Compact" of 1621, entered into between the members of the colony which afterwards settled in Plymouth, Massachusetts, the colonists "covenanted and combined" themselves into "a civil body politic" for their "better ordering and preservation." The charter of the Massachusetts Bay Colony of 1629 provided that the persons named and their associates should be a "body corporate and politic." The people of Connecticut by their "Fundamental Orders" in 1638 "associated and conjoined" themselves as a "public state and commonwealth." In 1641, the Commissioners to Regulate the Colonies appointed by the Lords and Commons after Charles I had refused to act with them on account of their insistence on the agency theory of government, granted to Roger Williams and his associates at Providence Plantations "a free charter of civil incorporation and government" by which the colony was given the name of "The Incorporation of Providence Plantations." The charter of Connecticut of 1662 declared that the persons named and their associates should constitute "one body incorporate and politic," and the same language was used in the Rhode Island charter of 1663. In all these charters provision was made for election of all the officials by the members of the corporation, and these colonies were treated by the English government as English corporations. This, however, the colonies contested. They claimed that they were American corporations, and states, created by the voluntary act of the members, and that the charters granted by the English government were mere authentications or approvals of the voluntary union of the colonists. In this they were in accord with the trend of modern thought. More and more it is beginning to be realized that corporations are created by the act of the members and not by the act of the state, and that when the state "grants" a charter of incorporation its act is in legal effect merely an act of authentication and approval for reasons of convenience, and not in a true and real sense of grant

of corporate powers. It is on account of the realization of this fact that progressive states now-a-days allow corporations to organize themselves under general laws.

After the colonies became independent, the idea that they were at once states and corporations was universally accepted and acted upon.

The third proposition on which the American system, as it would appear, is based is, that corporations may be formed of corporations. This proposition is now a familiar one to us in the industrial and social as well as in the political world. As a corporation is a legal person, there is no reason why it cannot be a member of a corporation. The idea, that a corporation may with other corporations, or even with other natural persons, form a corporation, is now so familiar to us as to be a commonplace. The modern "trusts" for industrial purposes and the modern "federations" of trades unions or other corporations for social purposes, are made up of corporations as members. A holding or "trustee" or "federating" corporation is created by the combining corporations which is given federal powers for the common purposes. The whole organization constitutes a corporation composed of corporations.

The conception of a corporation composed of corporations which should also be a state, was first worked out or at least foreshadowed by an arrangement between the colonies of Massachusetts Bay, Plymouth, Connecticut and New Haven, made in 1643, when England was paralyzed by civil war and the colonies, surrounded by enemies, were thrown on their own resources. These four colonies entered into a "Consociation" or "Confederation," declaring that they did so "for mutual help in our common concerns, that as in nation and religion so in other respects we be and continue one." The new federal corporation, by the name of "The United Colonies of New England," was governed by a board of eight commissioners, two from each colony; the board having power, by a three-fourths vote, to bind the whole federal corporation and state for certain specified purposes. This corporation composed of corporations continued in existence and operation for over thirty years, dealing with the common interstate concerns of these four colonies and with their foreign interests, without much interference from England.

From 1690 forward various schemes were proposed for federating the American colonies so as to form one federal corporation or state

either under Great Britain or in federation with that state. Among others, William Penn in 1697 formulated a very definite and complete plan. None of the plans for this purpose, however, was acceptable, but an arrangement was devised which, as it evolved, resulted in uniting the colonies and Great Britain into one corporation or state, which the colonies regarded as a corporation composed of corporations, to which the name "the British Empire" became attached. From 1696 until 1765, there existed in England a governing tribunal for the common purposes of Great Britain and the colonies which was made up of members of the King's Privy Council. This tribunal was called "the Committee of the Privy Council for Plantation Affairs" and was assisted by a subordinate body called "the Commissioners for Trade and Plantations." The whole British Empire, composed of Great Britain and the colonies was, as matter of fact, in cases arising before the tribunal, treated as if it were a corporation composed of corporations and as if it were a federal state composed of states; the state of Great Britain being in fact treated as the ruling state for the common purposes.

The fourth proposition on which the American system is based, it would seem, is, that to the convenient and orderly existence and operation of corporations, and of states which recognize themselves as corporations, written charters or constitutions are necessary. This is because limitations of power can be made effective only as they are carefully formulated in writing and published so as to be known to all concerned. As corporations are by their definition artificial persons and agents with limited powers, and as their officers are agents oftentimes linked together in a complex series of operations where there is a great division of labor, it is essential to their orderly and convenient management that these limitations of power should be formulated in written constitutions. The more complicated the corporation the more necessary the written formulation of the limitation of powers. Hence a written constitution is even more necessary to a federal state, which is composed of states, than to a compact state.

The discussion that was carried on prior to the American Revolution concerning the limitations of the powers of Great Britain and the colonies as constituent elements of the great state and corporation called "the British Empire," called attention to the necessity of written constitutions. It had long been recognized that corporations

for industrial or social purposes could not conveniently exist except under written charters. Cities and towns also had discovered the necessity of having written charters. All the American colonies except Virginia and New York were organized under charters recognizing more or less completely their corporate character, and the colonies had thus learned to appreciate the convenience of having their fundamental law contained in one document. The study of the relations between Great Britain and the colonies brought out the fact that the complex corporate and political unity called "the British Empire" was under a constitution of its own quite different from that of Great Britain. It also brought out the fact that there was a great difference of opinion as to what the provisions of the constitution of the British Empire were or ought to be. All Americans agreed that the empire was an aggregation of states under the headship of Great Britain, and that the powers of each of the constituent states were limited in such a manner that the whole British Empire could hold together and operate for the common good. It was pointed out by writers on both sides of the water that so large and complex an organization of states ought to exist under a plan of organization carefully formulated and written down in one document, so as exactly to express the limitations of the various agencies composing the government. The first act of the Continental Congress after deciding upon a declaration of independence, was to set about making a written constitution for the union of the colonies as states and corporations. All the colonies except Connecticut and Rhode Island, in accordance with the suggestion of the Continental Congress, adopted new written constitutions. Connecticut and Rhode Island, having power under their colonial charters to elect all their own officers, adopted their colonial charters as their state constitutions, and lived under them for many years after they became states.

The fifth proposition on which the American system is based is, as it would seem, that in order to keep the various agencies in a corporation working within their proper spheres and in harmony with each other, there must be somewhere in the organization a superintending agency with power to nullify the action of all other agencies which is in excess of the powers which these agents ought properly to exercise. Where a corporation is composed of corporations and the constituent corporations are thus at the same time agencies of government and members of the larger corporation, the necessity

of having some superintending and nullifying power to secure the proper working of the complicated mechanism becomes still more evident.

In the prevailing thought of the Americans, the king in council was the agency in the British Empire in which this superintending and nullifying power was lodged. The majority of the Americans regarded the Lords and Commons of Great Britain as the local legislature of Great Britain, and insisted that it was the duty of the king advised by his privy council, as an arbitral and judicial tribunal, to use his veto power as a nullifying power for the purpose of nullifying even acts of parliament which this tribunal should find to be in excess of the powers which Great Britain ought properly to have exercised as a constituent state and a governmental agent of the British Empire. It was because they considered that George III had failed and refused to exercise this superintending and nullifying power, as the superintending and nullifying agency of the whole empire, and had united with his ministers and the lords and commons in attempting to assume patriarchal or imperial power in the federal state called "the British Empire," that he was held responsible in the Declaration of Independence for the disintegration of this federal state.

The sixth proposition on which, as it would appear, the American system is based, is, that the superintending and nullifying power is an agency of a judicial, and not of a legislative or executive nature; and that therefore, although it is an extraordinary kind of judicial power, it may more safely be committed to the judiciary than to the executive or the legislative or to an extraordinary agency outside of the legislative, the executive and the judiciary. Such an extraordinary agency might easily pervert a superintending and nullifying agency so that it would become in fact a patriarchal or imperial power.

In the first written federal constitutions adopted by the American Union, it was sought to avoid the necessity of a superintending and nullifying tribunal by establishing between the colonies merely a permanent alliance or confederation advised by a Congress of ambassadors. The Declaration of Independence was itself in part a written constitution of union of the American states, for in it they described themselves as "The United States of America;" but as it contained no specification of the powers which the union, as distinct

from the states, should exercise, it created only a permanent alliance or confederation. The articles of confederation specified the powers of the union; the powers granted to congress being those which before the Revolution the king in council had exercised over the colonies as the federal head of "the British Empire" with their consent. These articles made no provision for any superintending and nullifying agency. They, however, denied to the union any power to lay or collect taxes, or to regulate interstate or foreign commerce, or to acquire or govern colonies. As these were the powers respecting the exercise of which in the empire Great Britain had made excessive claims of power, and out of which the dispute between Great Britain and the colonies had arisen, it seems to have been hoped that, by withdrawing these powers altogether from congress, disputes regarding the limits of powers would be avoided, and thus no superintendence or nullification would be required.

The Constitution of the United States, adopted in 1787, conferred these three disputed powers on the union and provided a method for nullifying acts done in excess of power by the union or by the states. This nullifying power as respects the limitations placed upon governments and states by that constitution, was vested in the Supreme Court of the United States in the last instance, though permitted to be exercised by all the courts subject to the final decision of the supreme court. It was thus recognized as a judicial power, though of an extraordinary kind. This was logical; for the question whether an agent, a governmental officer, a corporation or a state has exceeded his or its powers, can best be decided by the hearing and examination of evidence and the application of legal principles.

The seventh proposition on which the American system, as it would seem, is based, is, that in order to enable the judiciary to exercise its superintending and nullifying agency to prevent excess of powers of the other agencies of government, it is necessary that the constitution of the federal state should be made the supreme law of the federal state, and that the constitution of each state should, subject to this supreme law, be the supreme law of the state. By such an arrangement, this extraordinary power of the courts is exercised as a part of their ordinary judicial functions in hearing and adjudicating cases between ordinary parties litigant, and there is little possibility that power exercised in this non-spectacular manner will ever be given

any spectacular setting so as to lead to the popular belief that the depositaries of this power are really exercising a patriarchal or an imperial power. The citizen, observing the courts laboriously investigating facts and basing their decisions upon subtle distinctions of law drawn from experience and reason, is not likely to regard the courts as patriarchs or emperors. The safety and permanence of the whole agency system of government in states may, indeed, be said to depend upon the acceptance by the people of the proposition that the limitations of the powers of their governmental agencies are under a supreme law established by the people and interpreted like other law by the courts. Only through the prevalence and acceptance of this idea can there be assurance at all times against the recrudescence of patriarchal or imperial power.

The courts in the United States were, by the constitution of 1787, given jurisdiction to superintend and nullify all action of any of the governments limited by the Constitution of the United States by means of a provision which made the constitution, and the acts of congress in conformity with the constitution, "the supreme law of the land." Under this provision the constitution is applied by the courts, with final appeal to the supreme court, in the same manner as other law, except that it is treated as supreme so that any governmental action inconsistent with its provisions is void. In the same manner, the constitution of each state is its supreme law, subject to the Constitution of the United States which as to the limitations upon governmental power contained in it is supreme over all law throughout the United States.

Enough has been said, it is hoped, to have satisfied the reader that our form of government is based on the propositions that governments are the agents of the governed; that states are corporations; that federal states are corporations composed of corporations; that in all corporations written constitutions are necessary to determine the limitations of the powers of the officers of the corporation and of the corporation itself; that in the case of corporations composed of corporations, written constitutions are still more necessary to fix the limits of the complex agencies; that within every corporation, and especially within every corporation composed of corporations, there must somewhere be vested a superintending and nullifying power and agency, which can promptly and effectively nullify all action done in excess of power, so as to keep the whole mechanism

and the whole artificial personality working to its full capacity and effectiveness; that it is safer, as preventing the possibility of the recrudescence of patriarchal or imperial power, to vest this superintending and nullifying power in the judiciary rather than in the legislative or the executive, or in any extraordinary governmental agency outside of and distinct from the legislative, the executive and the judiciary; and also more logical, since the superintending and nullifying power is judicial in its nature; and that it is necessary, in order that the judiciary should exercise this great power, that our written federal constitution should be the supreme law for federal purposes and our state constitutions supreme law for state purposes.

Our system is therefore just, scientific and practical. It is more just, more scientific and more practical than any other system; for none would now assert that the patriarchal or the imperial theory of government is more just, more scientific and more practical than the agency theory, and all other systems are based on compromises between the agency theory and the patriarchal or imperial theory.

It therefore remains to attempt to discover in what respect our system is at the present time operating badly, and to attempt to suggest a remedy; and particularly to inquire whether the remedy can be had by the use of the initiative, the referendum or the recall.

A constitution of a corporation or of a state must evidently deal with four different subjects:

First. The organic structure of the corporation or state—that is, the relations which the parts of the mechanism bear to each other.

Second. The relations between the governing board of the corporation or the government of the state, and the individuals composing the corporation or state as members of the corporation or citizens.

Third. The relations between the corporation or state and its members or citizens, and those corporations or states with which it is federally or permanently connected or united, and their members or citizens.

Fourth. The relations between the corporation or state and its members or citizens, and those corporations or states with which it is not federally or permanently connected or united, and which are "foreign" to it, and their members or citizens.

The present defects in the working of our system are not with respect to the relations described in the first, third or fourth specifica-

tion. There is no complaint of the rulings of our courts in constitutional cases involving the relations between the different parts of our state and federal governments or between the Union and the states as parts of the mechanism of the Union, or involving our relations with our protectorates or dependencies, or with foreign nations, or with the citizens of any of these countries, or between our citizens and any of these countries or their citizens. The present complaint arises exclusively under the second specification. It is charged that our courts have ruled erroneously in constitutional cases involving the relations between the state and its citizens and inhabitants. In nearly all the cases where the courts are alleged to have made these erroneous constitutional decisions, their decisions have been made under constitutional provisions which declare that "no person shall be deprived of his life, liberty or property without due process of law."

On examining the decisions, it will be found that this constitutional provision has been gradually growing in importance in the estimation of the courts, until now it is regarded as furnishing a general test of the constitutionality of governmental action. In so interpreting this provision, it seems that the courts have erred.

By referring to the Petition of Right of 1627, presented by the lords and commons of England to Charles I, where the expression "due process of law" first occurs in a constitutional document, we shall find that these words are there used exclusively as applied to cases where a man's life, liberty or property is taken away on account of his alleged wrong-doing. The expression occurs in that petition only in the following statement:

"That no man, of what estate or condition that he be, should be put out of his lands or tenements, nor taken nor imprisoned nor put to death, without having been brought to answer by due process of law."

As respects the receipt by the government of the property of good citizens as taxes to be used for the public benefit, the Petition of Right does not use the expression "due process of law," but the word "consent." That provision reads:

"That [the people of England] should have this freedom, that they should not be compelled to contribute to any tax, tallage, aid or other like charge not set by common consent in parliament."

Lord Coke, who is often wrongly quoted as authority for using the "due process of law" provision as a test of the validity of all

forms of governmental action, held that quite a different test ought to be applied. In *Bonham's Case* (8 Coke, 115-118a), decided in the court of common pleas in 1611, while Coke was chief justice, he said, delivering the opinion of the court:

"When an act of parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such act to be void."

His successor in the chief justiceship, Hobart, in the case of *Day v. Savadge* (Hobart, 87), decided about 1620, said, in delivering the opinion of the court:

"An act of parliament, made against natural equity, as to make a man judge in his own case, is void in itself; for *jura naturae sunt immutabilia*, and they are *leges legum* (for the laws of nature are immutable, and they are the laws of laws)."

As late as 1701, Holt, Chief Justice of the Court of King's Bench, in the case of *City of London v. Wood* (12 Modern, 669), approved Lord Coke's statement in *Bonham's case*.

The American lawyers from the period of the Stamp act onward, led by James Otis, adopted the view of Coke.

John Adams, in his autobiography, gives an account of the drafting of the first resolutions of the Continental Congress by the committee of which he was a member. One question, he tells us, was whether the resolutions should declare the powers of Great Britain over the colonies to be limited by "the British constitution and our American charters," or whether they should "recur to the law of nature" as the basis of their claim to have rights as the governed, against Great Britain as their supreme, but legally limited, government. He says that he was "very strenuous for retaining and insisting on" the law of nature. The resolutions as adopted declared that the limitations of the governmental power of Great Britain as respects the colonies and their inhabitants existed "by the immutable laws of nature, the principles of the English constitution, and the several charters or contracts." It was natural, therefore, that in the Declaration of Independence our ancestors should have based their claim to be absolved from their former political connection with Great Britain, and to be independent states, on "the laws of nature and of nature's God;" and that they should have asserted that governments, however instituted, can only exercise such powers as are just, as agents of the governed. Not to have

inserted this limitation that the powers exercised by government must be "just" would have been to have rendered the Declaration inconsistent with their previous contention, and would have made the framers justly chargeable with bad faith. Having insisted in the controversy with Great Britain upon the universal principle that the powers of all governments are limited to those which are expressly delegated and which are just, it was logically obligatory upon them to adhere to this general principle in the Declaration of Independence and to make this principle applicable to every government and state which should ever be formed by the American people. That they intended to do so, and that they used apt words to do so, there can be no doubt.

The true limitations upon the powers of government in its relations with the governed, when its action is directed to the general welfare as a trustee for all, and not to the punishment or correction of an individual or a class of individuals as a guardian for the weak and deficient, are, it would seem, to be found in the preamble of the Declaration of Independence and in the preamble of the constitution. The Declaration is a federal constitution, since by it was formed the first union of the states. It is at the present time, in so far as it states general principles, our fundamental federal constitution. It has never been rescinded, nor in any way amended. It is not inconsistent with the constitution of 1787. The constitution of 1787 recognizes the permanence of the principles set forth in the Declaration of Independence, and of those set forth in the Articles of Confederation except so far as they are inconsistent with the constitution, by declaring that its purpose is "to form a more perfect union."

The preamble of the Declaration of Independence asserts that "to secure these [unalienable] rights [of life, liberty and the pursuit of happiness], governments are instituted among men, deriving their just powers from the consent of the governed." This makes the test of the constitutionality and validity of all governmental action in civilized society, first, whether the action of the government was taken under powers derived from the consent of the governed,—that is, under the delegation of powers contained in the agreement between the government and the governed; and, second, if the action was so taken, whether it is just as complying with the natural laws of the material universe and with those principles which in civilized society

are universally recognized as fundamental; which are formulated, perhaps as well as anywhere, in the Ten Commandments of the Old Testament and in the Two Commandments of the New Testament. This same limitation upon all governmental action is implied in the preamble of the Constitution of the United States when it declares that the people of the United States have ordained and established the constitution in order "to establish justice." Even in states where there is no written constitution specifying the particular powers delegated to the government, there exists from the necessity of the case a general limitation upon the powers of government, so that the courts can nullify all governmental action which is unjust.

That there must be a general power in any superintending and nullifying agency within a corporation to nullify any action of other agencies which is palpably absurd or unjust, goes without saying. A state or national law which should enact that a horse should be a man, or that two and two should make five, or which should give a reward to persons convicted of theft or murder, would of course be held void by any court of any state or nation in the world, as violating the natural laws of the material universe or the fundamental principles of social justice as laid down in the Decalogue. Our courts can find ample authority for nullifying such acts in the provision of the Declaration of Independence which declares that governments can exercise only "just" powers and in the provision of the preamble of the constitution that one of the purposes of the union is "to establish justice."

In the early constitutions of the states and in the fifth amendment of the Constitution of the United States, the expression "without due process of law" was used in the same connection as in the Petition of Right—that is, as limiting the power of the government to take away the life, liberty or property of the individual only when the governmental action is directed against an individual for alleged wrong-doing. In this connection the words meant that a person charged in court by another person with wrong-doing, or threatened by governmental action with loss of life or liberty or confiscation of property for alleged wrong committed against the state, could not be held by the government to be civilly liable and could not be penalized criminally except according to a proper procedure established in advance by law and according to principles of law duly formulated. In the fourteenth amendment, however, which was adopted after

the Civil War, for the purpose of giving the federal government power to prevent the southern states from reinstituting slavery by indirect means, the provision that no state shall "deprive any person of life, liberty or property without due process of law" was inserted in a connection where it might equally well be understood as covering cases where the state receives the property of honest citizens by way of taxation, or makes general regulations for the public good, and where it is seeking to take away life, liberty or property from persons who are charged with wrong-doing. The courts, under the leadership of the Supreme Court of the United States, have construed this provision as applying to all kinds of governmental action. In so holding it seems that the courts have clearly erred; since the expression "without due process of law," as applied to all kinds of governmental action other than that whereby the government seeks to take away the life, liberty or property of the individual on the ground that he is a wrong-doer, is clearly meaningless.

As the natural result of the attempt by the courts to use the words "without due process of law" as the general test of the validity of all governmental action when these words have no meaning except as applied to one kind of governmental action, our decisions in constitutional cases involving the relations between the government and the individual have become illogical and confused. The attempt to draw a meaning out of an expression which is meaningless because used in a wrong connection must necessarily lead to confusion. As the courts have applied an obscure and unreasonable test in the greater part of the cases involving the relations between the government and the governed, they have naturally fallen into the way of deciding these cases according to the personal or partisan notions of the judges.

The true test, when laws passed in the exercise of the taxing power or the police power are claimed to be unconstitutional on general grounds, is, it would seem, not whether they comply or not with the "due process of law" provision, but whether or not they are "just." In applying this test, the courts will of course not hold an act of the legislature not to be "just," unless it is so clearly "against common right or reason, or repugnant, or impossible to be performed," or "against natural equity" that for the court to uphold it would be to make the court an instrument of injustice instead of a court of justice. Thus in cases of policy, where no

moral right or wrong was involved, the legislature would finally determine the rate of social and economic progress; the courts following the legislature.

In the present situation, therefore, when our judiciary is under criticism, it seems that if the fourteenth amendment is agreed to be so worded that it requires the courts, in all cases involving the relations between the government and the governed, to decide by the test that the state shall not deprive the individual of his life, liberty or property without due process of law, that amendment ought to be amended. It would be sufficient if the words "for alleged wrong-doing" were inserted before the words "of life," so that the phrase would read "nor shall any state deprive any person, on account of alleged wrong-doing, of life, liberty or property, without due process of law." In case of governmental action aimed at individuals or corporations on account of alleged wrong-doing, it would then be the duty of the courts to see that the alleged wrong-doer had a fair hearing and trial under an appropriate process established by law, and according to principles of law duly established.

But perhaps no such amendment is necessary. It may be considered that the fourteenth amendment was not intended to have the broad signification which the courts have attached to it, and that the natural meaning to be given to the words above quoted—especially as the words "deprived of his life, liberty or property" are used, which almost necessarily mean a taking away on account of wrong-doing—is the restricted one according to which the provision in which these words occur is confined to governmental action directed against alleged wrong-doers. If so, the words are ambiguous, and the courts can by their own construction give the amendment its proper meaning.

The provision denying to governments the power to deprive individuals of their life, liberty or property without due process of law is one which occurs in most of the state constitutions, and the state courts have followed the United States Supreme Court in construing it as applying to all forms of governmental action by state governments. If by constitutional amendment or by construction of the United States Supreme Court the restricted meaning above mentioned is given to this provision, the effect would be to induce the state supreme courts to restrict the meaning of these words in the state constitutions, and the confusion which has been caused by

attaching too wide and general a meaning to this constitutional provision should, it would seem, tend to cease.

If the courts should thus by a proper construction of the words "due process of law" be put in the position where they would have to apply specific and easily understood limitations of governmental powers as tests in exercising their superintending and nullifying power, with the addition that they were obliged to nullify any governmental action that was clearly not "just," it is probable that there would not be much dissatisfaction with their constitutional decisions. If the issue was as to the application of a specific and plainly worded constitutional limitation, there would not be room for much personal or partisan reasoning by the judges. If the issue were as to whether a particular governmental action was "just," the court would hold such action unconstitutional only in case it was clearly absurd or impossible, as being opposed to the natural laws of the material universe, or in case it was clearly wrongful as being opposed to the fundamental principles of social justice formulated in the Ten Commandments of the Old Testament and in the Two Commandments of the New Testament. The natural laws of the material universe are necessarily fundamental law; and it is not too much to say that the Great Commandments are now accepted, in theory at least, throughout the society of nations, as fundamental law. Courts in determining whether governmental action was or was not just would in fact be sitting not as state or national courts, but as courts of the society of nations; for the same principles which would determine whether a certain governmental action was unjust in one nation, would equally control in a similar case in every other nation, and any court in deciding such a case would in a very true sense be applying the constitutional law of the society of nations as the supreme law.

In passing it may be said that this conception of our national courts sitting as courts of the society of nations is not a fanciful suggestion, but is a practical political fact. More and more statesmen and publicists everywhere are realizing and accepting as a fact of practical politics that there is a society of the peoples, states and nations of the world, which for want of a better name we call "the society of nations;" that this society is a corporation composed of corporations and a federal state, having a federal government which is the agent for the common purposes of the peoples, states and

nations governed; that this federal government does not consist of a body of definite persons, collected together in one place as the capital, and is not elected on the representative basis, but is made up of nations, states, governmental officers of nations and states, and publicists, scattered over the face of the earth, and is carefully arranged so as to protect the rights of the weaker states and nations and of all minorities; that this inclusive society and federal state has by various legislative methods formulated and is still formulating its own federal constitutional, statutory and customary law, commonly known as "international law;" and that it is daily enforcing its federal law by various executive methods and particularly through the nations and states as its executive organs; and that therefore national courts, in determining what is "just," are not at liberty to consider alone what is regarded as just by the "common juridical conscience" of their own nation, but must also consider what is regarded as just, and treated as fundamental law, by the "common juridical conscience" of the society of nations.

We may, therefore, it would seem, reasonably hope that by making all our special constitutional limitations clear and distinct and easily understood,—which we shall do by giving the "due process of law" provisions a restricted meaning so that they will apply only where governmental action is directed against individuals as alleged wrong-doers,—and by making the only general test of constitutionality the test of "justice,"—regarding "justice" as that which is considered just by the "common juridical conscience" of the society of nations,—the courts will, as a general rule, act in a manner satisfactory to the enlightened intellect and conscience of the people. But when all precautions are taken it may still happen that the courts, as the superintending and nullifying agencies of our states as corporations, will occasionally err and will themselves exceed their powers and act unconstitutionally. The question arises, what shall be the remedy in such a case.

One remedy which has already been frequently applied, is to amend our constitutions so as to recall the erroneous decisions and validate future governmental action of the kind which the courts have wrongly nullified. But such a process of amending our constitutions is dangerous to our system. Our written constitutions by such amendments are ceasing to be statements of fundamental principles and are becoming confused legislative codes. Thus by

this method of attempting to remedy the difficulty our written constitutions are being indirectly destroyed. It is necessary, therefore, to consider other possible remedies.

If we agree that states are corporations, the remedy to be applied where the courts of a state exceed their powers to superintend and nullify other agencies and nullify wrongly, is the same as would be applied in a corporation if a superintending and nullifying official in a corporation should wrongly exercise his powers of superintendence and should nullify action which he ought to have allowed to stand as valid. The members of the corporation, while indulging in every presumption in favor of the superintending and nullifying official, and relying, as reasonable men ought to do, upon his expert judgment to the fullest extent possible, would, if they were satisfied beyond a reasonable doubt that he had nullified action of an agent which he ought not to have nullified, either remove him by vote of the majority of the members or validate by similar vote the action which he purported to nullify.

This seems to be what is meant by "the recall of judges" and "the recall of decisions," as these expressions are now used by those who believe our courts have erred. The recall of judges is, however, used in two senses which it is necessary to distinguish from each other. There is a recall of judges for incompetence, and a recall of judges for having participated in constitutional decisions by which governmental action has been wrongly nullified. The recall of judges for incompetence, and the recall of judges for participation in constitutional decisions which are erroneous, stand on entirely different grounds. Every state or nation ought to have some orderly method of removing judges for incompetence. Impeachment does not meet such a case, since impeachment is permissible only where moral turpitude can be proved. The best method of removal seen is to be by action of the legislature addressed to the executive, though there appears to be no serious objection to a referendum for this purpose if the people prefer it, and it happens to work well in a given state or nation. The recall of judges for participation in constitutional decisions in which governmental action is erroneously nullified, or the recall of these decisions, must be by referendum, if at all; though the referendum need not actually remove the judges or actually reverse the decision. That the people assembled may exercise this right without necessarily destroying our system is evident. That,

in extreme and clear cases, they not only may but ought to exercise in some manner the right to validate governmental action wrongly nullified by the courts is also evident. That this is a dangerous power to be exercised by popular vote is also evident, since it is only in extreme and rare cases that the popular judgment would be likely to be more correct than the expert judgment of the courts. If exercised frequently and if exercised wrongly, it would tend to unsettle our whole system and in the end would probably destroy it. But that a power is dangerous to exercise, is no reason why it should never be exercised. That it is dangerous is a reason for using caution when the power is exercised, and the more dangerous it is the greater ought to be the caution in exercising it.

The recall of judges and the recall of decisions, when used to correct aberrations in the constitutional action of the courts, should undoubtedly be used rarely, and only in extreme cases and as a last resort; and even then with caution and under the most careful safeguards. It should always be remembered that the decision of a court is final only in the case decided, and is never final as settling legal principles; that it is generally the part of wisdom to trust to experts in matters which are complicated and which can be fully mastered only by experts who give their lives to learning the art; that the court as an institution is everlasting; and that though one bench of judges may err, another bench may correct the error, so that the court as an institution is never likely to be wrong except temporarily. Considering the dangers of the recall of judges or the recall of decisions, it seems that it is on the whole safer, in all but the most extreme and rare cases, to trust to the courts correcting their own errors by the pressure of public opinion; never allowing them to forget, however, that they are only the superintending and nullifying agencies of the state as a corporation, and that the people of the state as members of the corporation have the right, which they can and will exercise in the last resort, to annul unconstitutional action of the courts as such superintending and nullifying agencies and to validate the nullifying action, or, at their option, to remove the judges who have thus erred. To grant that the courts in the United States have powers not subject to control by the people in the last resort is to make the courts the American patriarchs or emperors. Like every other governmental agency, our courts, whatever may be the functions they exercise, are the agents of the governed and form a part of

the managing boards of the states and of the nation as corporations. Though they have greater functions than the courts of foreign countries, they have a responsibility to the people which prevents the abuse of these great functions. There appears no likelihood that there will ever be such a use of the initiative, the referendum or the recall as will interfere with the performance by our courts of these functions; and there is much in the movement for recall of judges and recall of decisions to encourage the belief that sturdy manhood still persists throughout the American jurisdiction, demanding that governments shall be and remain the agents of the governed.

A NEW METHOD OF CONSTITUTIONAL AMENDMENT BY POPULAR VOTE

BY WILLIAM DRAPER LEWIS,
Dean of the Law School, University of Pennsylvania.

The peculiar position of the judiciary in our constitutional system and the insistent demand for advanced economic legislation, has led in many instances to a conflict between the desires of the people and the decisions of the courts, especially some of the state courts, in respect to the constitutional right to enact what many consider much-needed legislation. These conflicts have led many to insist that the people shall have a right to recall, by popular votes, judges with whom they have become dissatisfied. Colonel Roosevelt, on the other hand, has proposed that the people shall have what he terms a right to recall a certain class of decisions on state constitutional questions.

In discussing the wisdom of any proposition it is essential to get first a clear idea of exactly what the proposition is. The strong protest from many members of the legal profession against Colonel Roosevelt's plan is unquestionably in great part due to a misunderstanding of exactly what it is that he proposes. What he does propose is this: If an act of the legislature is declared by the state courts to violate a provision in the state constitution, after an interval for deliberation, the people of the state shall have an opportunity to vote on the question whether they desire to have the act become a law in spite of the opinion of the court that it is contrary to the constitution.

Owing to his expression, "The Recall of Decisions," many persons have supposed that Colonel Roosevelt meant that the court's judgment in the case in which the act was held unconstitutional should be reversed; that the judgment which we may suppose to have been given for the defendant would, by the vote of a majority of the people of the state assembled in voting booths, be made a judgment in favor of the plaintiff! It is needless to point out the ridiculousness of such a proposition. Even if we can be so foolish as to suppose that any American commonwealth could be induced

to adopt it, the provision would be, of course, unconstitutional under that clause of the fourteenth amendment of the federal constitution which provides that no state shall "deprive any person of life, liberty, or property without due process of law." As I shall have occasion presently to point out, the meaning of that clause has perhaps been somewhat extended in recent years; but no one now doubts that whatever else it means, it unquestionably prevents a judgment being entered in favor of one party or the other in a criminal or civil suit by any other tribunal than a court. If A makes a claim against B, which B denies, B has the right to have the question whether the claim of A can be enforced determined by a court. When a court determines that one party to a suit is entitled to a judgment in his favor under existing law, constitutionally that judgment cannot be reversed except by a higher court, and whatever difficulty there may be in the accurate definition of the word "court," there is no question but that the voters of the state assembled in their respective voting precincts do not constitute a court. The plan proposed is not that the decision, meaning the judgment in the case, shall be recalled; but that the decision, meaning the opinion of the court that the act is contrary to the constitution, shall be so far recalled, that, after an affirmative vote by the people in favor of the act, the court cannot in a subsequent case declare that the act is invalid.

As thus explained, the real issue presented by the proposition of Colonel Roosevelt is whether this new method of amending *pro tanto* the state constitution has practical advantage in view of the methods now in force. Or, to put the matter in another way: While the explanation of the real nature of the proposition deprives it of all revolutionary aspect, is there any practical necessity for it? I shall try to answer this question.

The provisions of our state constitutions may be divided into two classes. First, there are those which deal with specific subjects. A single example will suffice. The Constitution of the State of Pennsylvania provides that "No act of the general assembly shall limit the amount to be recovered for injuries resulting in death or for injuries to persons or property."¹ Here we have a definite provision dealing with a specific subject. There is no possibility of misunderstanding its meaning and therefore practically no room for a differ-

¹ Art. III, section 21.

ence of opinion as to its application. In view of it the State of Pennsylvania cannot now pass a compulsory workmen's compensation act, the essential elements of such an act being that the plaintiff, irrespective of the negligence of the defendant, recovers a definite sum of money, while all rights under the existing law of negligence are abrogated. As applied to this concrete provision of the constitution, or to any similar specific provision, it may be freely admitted that Colonel Roosevelt's suggestion has no importance.

Another and important class of provisions in state constitutions is those which enunciate general principles, of which by far the most important and indefinite is the one which in one form or another expresses the idea that no one shall be deprived of his liberty or property without due process of law. Originally, as in the fifth amendment to the federal constitution, this provision probably merely meant that no one should be deprived of his liberty or property by the arbitrary action of the executive arm of the government. This, however, is a question on which students of our history may reasonably differ. There is no doubt, however, that to-day, under the decisions of the courts, whatever it originally meant, it now means:

First.—That the procedure by which a person is deprived of his liberty or what he claims to be his property, shall be "due" in accordance with the fundamental ideas of judicial procedure prevalent among English-speaking people.

Second.—That an act of the legislature is void which violates fundamental ideas of morality and social justice.

The most difficult of human problems is the adjustment of the economic liberty of the individual with necessary governmental regulation and action. The freedom of the individual is still as always essential to progress. On the other hand, it is also essential to progress that the people collectively by governmental regulation and action preserve and create conditions which tend to conserve and develop, not only the natural resources of the country, but the human resources,—the men, the women and the children. An act which limits the freedom of contract, or the use to which private property may be put, is usually spoken of as a police act; or an act passed under the police power of the state. If the act limits the freedom of the individual in a wholly unnecessary manner it violates "fundamental ideas of social justice," and the courts will declare it unconstitutional under the due process of law clause. In so doing,

of necessity, the judges must determine whether the act in question does or does not violate fundamental ideas of social justice. But ideas of morality and social justice change with changing social and economic conditions. A regulation of persons or property which is arbitrary and unfair to one generation is not necessarily arbitrary and unfair to another. When, therefore, an act is attacked before a court as arbitrary or unfair, and therefore as depriving persons of their liberty or property without due process of law, the court is confronted with the question of the standard by which they shall test the question presented: shall they test the act by the ideas prevalent in the past or by the ideas prevalent to-day? The courts have not given a clear answer to this question, and yet on the answer depends the usefulness of the functions performed by the courts in this class of cases. If the courts continually declare acts which are in accord with modern ideas of social justice, unconstitutional, because they violate some outworn system of political economy, they become intolerable clogs on the orderly solution of present social and economic problems. On the other hand, if they only declare unconstitutional, under the due process of law clause, those acts which do violate the ideas of social justice existing at the present time, they perform a function of inestimable value. That any act passed under the police power which is not contrary to the preponderant ideas of social justice, and which does not violate any specific clause of the federal or state constitution should be upheld by the courts is beginning to be generally recognized. Thus, Mr. Justice Holmes, speaking for the supreme court said: "The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."²

Unfortunately the courts have not always followed the rule here laid down. A judge is not only influenced by precedent if other decisions have been made on similar legislation, but he is also consciously or unconsciously influenced by his own ideas of the necessity for the legislation. These ideas are the result of his education and experience, and this education and experience are not always such as to tend to make him sympathize with modern social and industrial legislation. The education and experience of different

² *Noble State Bank vs. Haskell*, 219 U. S. 104, 111.

judges vary, and therefore, no lawyer pretends to be able to reconcile all the decisions under the police power of the different courts of the United States or even of a single court. Of course, there are a large number of supposable acts, and some that have been actually passed, that are contrary to present ideas of social justice, and therefore are clearly arbitrary and unfair. When a court declares such an act void no protest is heard. The weight of public opinion is back of the decision, for the court has correctly interpreted the then prevailing sentiment, the test of due process in this connection.

The widespread feeling among laymen against courts, and even against written constitutions, which is a new and, I believe, an alarming feature in the current thought of the day, is due to the action of the courts in holding unconstitutional much of the legislation designed to rectify some of the more glaring evils of our present industrial system, such as statutes regulating hours of labor, work in tenements, workmen's compensation acts, etc. From the point of view of those keenly interested in such questions and coming in daily contact with the classes of the community practically affected by them, the effectiveness of such legislation often necessitates provisions which, to persons brought up under the economic and social philosophy of a few decades ago, appear unnecessary and arbitrary. Thus, much legislation which has been passed after years of effort on the part of those having special knowledge of existing conditions, and representing what to them, and indeed to the average man, is plain social justice, has appeared to some judges as unnecessary and arbitrary, and therefore has been held unconstitutional, under the due process of law clause in the constitution. Indeed, any one who has had anything to do with promoting social legislation knows, that no matter how carefully an act may be drawn, there is always a doubt in regard to its constitutionality until it is supported by the highest court of the state or by the Supreme Court of the United States. Any important act of any state legislature regulating social or industrial conditions is at the present day often little better than a patent issued by the government in a new art—of doubtful value until it has passed the gauntlet of the courts.

Numerous illustrations may be cited. For example, in 1886 the Supreme Court of Pennsylvania held unconstitutional an act which prohibited the payment of the wages of miners in anything but money. The act was aimed at the store-order system of pay-

ment, which was regarded by many persons as one of the great evils of the mining regions. The court might have held the act unconstitutional because it did not apply to all laborers. But Mr. Justice Gordon, who gave the opinion, declared that the provisions "are utterly unconstitutional and void inasmuch as an attempt has been made by the legislature to do what in this country cannot be done; that is to prevent persons who are *sui juris* from making their own contracts." In order to make it entirely clear that the ground of his decision was merely that the act was arbitrary, he tells us that the laborer "may sell his labor for what he thinks best, whether in money or goods, just as his employer may sell his iron and coal; and any and every law which proposes to prevent him from doing so is an infringement of his constitutional privileges, and consequently vicious and void." In view of the actual conditions in the coal regions at that time, the court's defense of the liberty of the mine laborer to accept an offer of goods, is a strange mixture of the ridiculous and the pathetic, while the fundamental distinction between the act so unceremoniously declared unconstitutional by the court, and an act prohibiting usurious contracts, is hard to understand.

In spite of the opinion of the Pennsylvania court that in this country such an act cannot be passed, many of our states have passed such acts, following similar acts in Germany and England; and, while the opinion of the Supreme Court of Pennsylvania has been followed in Illinois,³ in Kansas,⁴ and in Missouri,⁵ such acts have been held constitutional in West Virginia, in Tennessee, in Colorado, and, in the case of Knoxville Iron Company *vs.* Harbison, by the Supreme Court of the United States.⁶ The condition, therefore, in Pennsylvania is that, while an act prohibiting the payment of laborers in store orders is constitutional under the federal constitution, and while such legislation has been upheld in other states of the Union, it would require a formal amendment of the state constitution to make possible such legislation in Pennsylvania.⁷

In the well-known "tenement-house case,"⁸ an act of New York

³ *Fraser vs. The People*, 141 Ill. 171 (1892).

⁴ *Kansas vs. Haun*, 61 Kan. 146 (1899).

⁵ *State vs. Loomis*, 115 Mo. 307 (1893).

⁶ 183 U. S. 13 (1901).

⁷ For the cases and discussion of the acts dealing with store orders see "Freund on the Police Power," sections 319, 320 and 321.

⁸ *In re Jacobs*, 98 N. Y. 98.

which prohibited the manufacture of cigars in tenement houses was declared unconstitutional. In Nebraska it was held to be beyond the power of the legislature to provide that eight hours should constitute a legal day's work for all classes of mechanics, servants and laborers other than those engaged in farm and domestic labor. The court regarded the statute, not only as class legislation, but also as an interference with the liberty to contract.

Colonel Roosevelt follows Mr. Justice Holmes. He believes that what is due process of law depends on present, not on past ideas of social justice. Therefore, when a court declares that a particular act deprives a person of his liberty or property without due process, it is in accordance with scientific principles to submit to the people the question whether the act is to them arbitrary and unfair. As all the court has done is to declare that the act is not justified by the "strong and preponderant opinion," there is no reason why the correctness of the conclusion should not be referred to popular vote, in order that it may be tested in the laboratory where that opinion is formulated.

But at this point it may be pointed out by those who doubt the practical value of Colonel Roosevelt's proposal, that, under our present system, if the court should be mistaken in regard to the ideas of social justice prevalent at the time in the community, all the people have to do is to have an amendment passed to their constitution specifically stating that an act of the character declared void by the court shall not thereafter be regarded as depriving any one of his liberty or property without due process of law.

It is well, however, to realize the practical result of this process of specific amendment as applied to the due process of law clause. By such amendments the people do not merely sanction a particular compensation act, or particular act regulating the hours of labor; but any compensation act or regulation of hours act which may be passed no matter how arbitrary its provisions.

This is exactly what has happened in New York as a result of the decision of the court of appeals holding the Workmen's Compensation Act unconstitutional. The people of the state seem to differ from the court on the question whether such an act is contrary to the fundamental rules of social justice. The bar association and other bodies more especially interested have, therefore, undertaken to urge the legislature to amend the due process of law clause, by a

specific declaration that nothing therein shall be held to prevent a workmen's compensation act. The amendment which has already passed one legislature is as follows:

Nothing contained in this constitution shall be construed to limit the power of the legislature to enact laws for the protection of the lives, health, or safety of employees; or for the payment, either by employers or by employers and employees or otherwise, either directly or through a state or other system of insurance or otherwise, of compensation for injuries to employees or for death of employees resulting from such injuries without regard to fault as a cause thereof, except where the injury is occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another, or where the injury results solely from the intoxication of the injured employee while on duty; or for the adjustment, determination and settlement, with or without trial by jury, of issues which may arise under such legislation; or to provide that the right of such compensation, and the remedy therefor shall be exclusive of all other rights and remedies for injuries to employees or for death resulting from such injuries; or to provide that the amount of such compensation for death shall not exceed a fixed or determinable sum; provided that all moneys paid by an employer to his employees or their legal representatives, by reason of the enactment of any of the laws herein authorized, shall be held to be a proper charge in the cost of operating the business of the employer.

When the amendment is finally adopted practically any compensation act will be constitutional as far as the state constitution is concerned. For instance, an act might be passed providing that a man permanently disabled could only recover an equivalent of half wages for one year, and the courts, bound by the amendment, would be obliged to hold the act constitutional. Thus, under the present system, if the people of the State of New York do not adopt a formal amendment to their constitution, they cannot have any workmen's compensation act. On the other hand, if they do adopt the amendment proposed they can have, not only the particular compensation act which was passed, but any compensation act, no matter how arbitrary some of its provisions or classifications might be.

Or again take some recent history in Colorado. In 1899 the supreme court of that state declared unconstitutional an act which prohibited the employment of persons in underground mines for longer than eight hours per day, except in case of emergency where life or property was in imminent danger.⁹ This decision was rendered in spite of the fact that the Supreme Court of the United States had, during the previous year, held that a statute of Utah, identical in

⁹ *In re Morgan*, 26 Colo. 415 (1899).

terms except as to the penalty prescribed, was a valid police regulation.¹⁰ As a result of this decision, the people of Colorado in 1901 approved the following amendment: "The general assembly shall provide by law, and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight (8) hours within any twenty-four (24) hours (except in case of emergency where life or property is in imminent danger) for persons employed in underground mines or other underground workings, blast furnaces, smelters; and any other reduction works or other branch of industry or labor that the general assembly may consider dangerous to health, life or limb." Hence, exactly as in the other illustration given of workmen's compensation acts, any act regulating the hours of labor in the employments mentioned which the legislature chooses to pass, no matter how arbitrary the regulation, must be upheld by the courts acting in obedience to the amendment. It would be entirely possible for the general assembly to prescribe six hours, or four hours, or any period less than eight hours as the period of employment.

It takes no prophet to foretell that, with the prevailing desire for legislation which will correct some of the more obvious defects of our social and economic system, if the courts of a state are out of sympathy with such legislation, it will not be long before, by successive amendments, the due process of law clause of the constitution of the state will be practically abrogated. If no other system be provided, the present method of constitutional amendment, while permitting the people ultimately to express their desires in the constitutions, will, in the necessarily short statement of specific amendments, endanger other constitutional guarantees of their liberties which all consider essential to retain.

The advantages of Colonel Roosevelt's suggestion as applied to such instances as those referred to are obvious. He provides, it will be observed, a method of obtaining legislation which does correspond to the prevailing ideas of fairness and social justice, while at the same time retaining in our constitutions the principle that no act which is arbitrary or unfair should be recognized as law.

There is, however, one illustration which has been produced to show that the plan proposed by Colonel Roosevelt, instead of being a moderate and sane proposition as here claimed, is radical and dangerous. There is a class of cases in the courts, which, instead of

¹⁰ *Holden vs. Hardy*, 169 U. S. 366 (1898).

declaring an act unconstitutional, merely states that it is unconstitutional as applied to the particular party to the litigation before the court, but not necessarily unconstitutional as to all persons who might be brought under its provisions. The case of *Pennsylvania Railroad vs. Philadelphia*¹¹ is a case in point. In that case the court declared that the act of April 5, 1907,¹² which provided that no railroad in the state should charge more than two cents a mile for the transportation of passengers, was unconstitutional as applied to the Pennsylvania Railroad, because that railroad could not make a reasonable return on its investment under such a regulation. At the same time the court admitted that, as far as the act applied to another railroad operating under different conditions, it might be constitutional. Similar decisions might be and have been made where the legislation has fixed the price on gas or other commodities furnished by a public service corporation.

It is pointed out that had the plan proposed by Colonel Roosevelt been in operation, the question whether the act should or should not apply to the Pennsylvania Railroad could be put to popular vote, and a vote in the affirmative would in effect, as far as the future charges were concerned, reverse the judgment.

It is, of course, beyond question that the plan proposed by Colonel Roosevelt would cover such a decision as the one referred to. The act declared that no railroad operating in the state should charge more than two cents a mile. There is no question but that the act applied to charges by the Pennsylvania Railroad. The court, therefore, declared the act unconstitutional as applied to conditions to which it was clearly intended to apply.

Personally, I believe that an act of the legislature which does not confer the power to make railroad rates on a commission, but, as the Pennsylvania act did, lays down by direct legislative action a definite rate, is essentially unsound and vicious. I have, therefore, sympathy with the very natural inquiry: "Would you put the question to the people as to whether such an act, in spite of the opinion of the court that it left some at least of the railroads of the state without an adequate return on their investment, go before the people to be voted on?" My reply to this question is that I certainly should not sign a petition to have such an act placed before

¹¹ 220 Pa. 100.

¹² P. L. 59.

the people, any more than I would move for its consideration, or vote in its favor if I were a member of the state legislature.

But the plan proposed by Colonel Roosevelt is not, in relation to the illustration now under examination, essentially different from the method of amendment now in force. It is perfectly possible to-day to amend our state constitution by popular vote, and then adopt a two cents a mile railroad rate bill, if there are enough persons determined to have such an act. Colonel Roosevelt's proposition, therefore, involves but a change in method. And, furthermore, there is just as much likelihood of the people of the State of Pennsylvania losing their heads and insisting on the adoption of such an amendment, as there is, under Colonel Roosevelt's plan, of their re-adopting such an act as the one referred to, after the decision of the court holding that, as applied to at least one railroad, it is unconstitutional.

There is a large number of persons who believe that the system by which a court is permitted, under the due process of law clause, to declare void an act of the legislature, merely because they believe that the act is arbitrary and unfair, is unwise. Such persons assert that this power in the courts makes of this country a "judocracy," and that the rule of judges is in the long run as intolerable, as the rule of an aristocracy or of any other special class. But, personally, I believe, that many acts are passed by legislatures without much consideration, and often at the instance of particular classes of the community, which do violate prevalent ideas of social justice, and that it is a peculiar advantage of our system of government in the United States, that we have a judiciary charged, by custom at least, if not by direct mandate, with the duty of refusing to regard an act as valid if in their opinion it is arbitrary and unfair. It is submitted that the people are entitled to be told by the court, that the act which the legislature has passed, is, in the opinion of at least the majority of the members of the highest court of the state, an arbitrary act. If after full notice and consideration they then choose to differ from the court, and adopt the act or a constitutional amendment, it can at least be said that the act was adopted on due consideration. I have, however, on the other hand, no sympathy with those persons who declare, that merely because an act has appeared as arbitrary and unfair to a small body of men—perhaps merely to three out of five, or four out of seven, persons—that thereafter that act or any

act like it cannot become a law, irrespective of the desire and opinion of the people. As between these two extremes—the desire of those on the one hand who would take from the judges all power to declare an act unconstitutional under “the due process clause,” and on the other hand the desire on the part of a few to place all progress in social legislation at the mercy of the courts, the proposal of Colonel Roosevelt appeals as a moderate and sane proposition, tending to preserve the court in its power to set aside acts which appear to the judges as arbitrary, and yet at the same time preserving to the people the power ultimately to express in legislative form any law which a persistent majority desires.

This perhaps is the proper place to refer to a question which is frequently asked: Under Colonel Roosevelt’s plan, how far would the action of the people in enacting legislation which the court has previously declared to be contrary to the state constitution, be regarded as a precedent which should influence the court when the act approved by the people is repealed, a second similar act is passed, and the question of the second act’s constitutionality is brought before the court? If the original act was declared unconstitutional because it violated some specific clause of the state constitution, as the clause to which I have referred from the Constitution of Pennsylvania, or a clause protecting the obligation of contracts, the action of the people would, and should, have no effect on the court when another and similar act was before it. But as “due process of law” is that which corresponds to the preponderant and prevalent ideas of social justice in the community, a vote of the people adopting such an act as, for instance, a workmen’s compensation act, would, and should, have great weight with the court when the second act on the same subject came before it, but so far only as it shows that such legislation, in its principle, is not arbitrary and unreasonable.

There is one matter which has tended to somewhat obscure the fundamental idea which is back of Colonel Roosevelt’s suggestion. At the present time the method of amending our state constitutions differs greatly among the several states. In many states, the method of amendment is exceedingly cumbersome. In my own state, Pennsylvania, for instance, in order to amend the state constitution, the amendment must be passed by two successive legislatures before it can be voted on by the people, and the legislature meets only on alternate years. As a result of this and similar con-

ditions in other states, there is a very widespread feeling among large classes of people that the methods of amending state constitutions, and even our national constitution, should be less cumbersome than they are. This is not the place to enter on a discussion of the merits or demerits of this suggestion. The plan proposed by Colonel Roosevelt is, as I have tried to show, a method of dealing with differences of opinion between the court and the people on what regulations are arbitrary and unfair when applied to existing social and economic conditions. The length of time which should elapse between the decision of the court declaring the act void and the vote of the people on the act is a matter of detail. By this I do not mean it is unimportant. It is very important that the people shall have an opportunity to consider carefully the act and the opinion of the court before being asked to vote upon it; but at the same time, it is a detail in that it does not affect the essential features of Colonel Roosevelt's plan, whether the interval of time is three months, six months, a year, or even more.

One other matter should be referred to. Colonel Roosevelt has emphasized the fact that his suggestion for all present practical purposes applies only to acts which have been declared unconstitutional because they violate state constitutions, and not to acts declared unconstitutional because they violate the national constitution. I have emphasized the fact that the value of the suggestion made by him is largely confined to cases in which acts have been declared unconstitutional because they violated that clause of the state constitution which prevents property from being taken without due process of law. But the fourteenth amendment of the federal constitution also contains a provision "that no state shall deprive any person of his life, liberty, or property, without due process of law." Suppose an act comes before the state court and is declared unconstitutional because depriving a person of his property without due process of law contrary to that provision in the state constitution. Subsequently, under Colonel Roosevelt's plan, the act is voted on by the people, and becomes, as far as their votes can make it, a law of the state. The act again comes before the same court. The action of the people prevents that court from saying that the act is not a law because against the state constitution; but what prevents them from declaring the act unconstitutional because it violates the fourteenth amendment of the federal con-

stitution? There is, of course, nothing to prevent their doing so. There is nothing, for instance, to prevent the Supreme Court of New York, after the state constitution is amended so as to permit the passage of a workmen's compensation act, and another workmen's compensation act is passed, from declaring the new act void under the federal constitution. But the action of the people has at least enabled the question of the constitutionality of the act under the federal constitution to be brought before the Supreme Court of the United States. It is true that the methods of doing this under the present provisions of the Federal Judiciary Act are exceedingly cumbersome. Under the twenty-fifth section of that act, it is at present impossible to take a case to the Supreme Court of the United States from the highest court of the state where the latter has declared the act unconstitutional under the federal constitution. To bring the question before the supreme court, therefore, a case, and perhaps the first case, must be brought in the federal courts under the provisions of the third article of the Constitution of the United States which gives to those courts jurisdiction in cases of diverse citizenship. There is, however, a movement, now embodied in an act pending in congress, and which has the support of the American Bar Association, to amend the judiciary act which, should it be successful, will enable an appeal to be taken to the Supreme Court of the United States from a state court by either party, when the state court holds an act unconstitutional under the federal constitution. In any event, however, as stated, the Supreme Court of the United States would have an opportunity to pass on the question.

It may be asked, what would be done when the Supreme Court of the United States declared an act unconstitutional under the "due process" clause of the fourteenth amendment? If Colonel Roosevelt's plan is sound, why should it not apply and the act be referred to all the people of the United States? There is, of course, in theory no reason why this should not be done. I think, however, you will agree with me that it will be better to meet that question when, in passing upon acts demanded by the sense of social justice prevalent in the persistent majority of the people, the action of the Supreme Court of the United States in repeatedly declaring them unconstitutional, has created a strong sentiment among the people that that court does not represent modern ideas of social justice.

While this is the feeling towards many state courts, it is not

to-day the feeling towards the Supreme Court of the United States. There is, I am glad to say, a very general belief that that court, as now constituted, is probably in reasonably close touch with the desire of the people for social and economic legislation looking to the betterment of the conditions of life. The prevailing confidence that the Supreme Court of the United States will uphold, in spite of the decision of the Court of Appeals of New York, the constitutionality of any reasonable workmen's compensation act, either elective or compulsory, is an example of what I mean. Therefore, I think Colonel Roosevelt indicates the possession of a very large measure of practical wisdom when he suggests, that the plan he proposes, for the present at least, be confined to acts declared unconstitutional by state courts under state due process of law provisions.

BOOK DEPARTMENT

NOTES

Addams, Jane. *A New Conscience and an Ancient Evil.* Pp. xi, 219. Price \$1.00. New York: Macmillan Company, 1912.

Jane Addams' essays are always full of grace and dignity. Few persons could take the great mass of evidence revealed by investigations of the social evil in Chicago, eliminate the gruesome details, and still give so clear an insight into its horrors, and leave such a feeling of sympathy for its victims as Miss Addams. No one can take exception to the treatment or fail to be roused by her arguments.

Just as slavery, though strongly entrenched as a vested interest, was finally destroyed, so may prostitution. This involves not merely a frontal attack on the evil and those who profit therefrom but more attention to the education of children, the supervision of amusements, and the raising of wages of working girls. The elimination of disease must be sought. In this new exercise of social control women must take active part—another reason, in the author's opinion, for the suffrage.

Alden, Percy. *Democratic England.* Pp. xii, 271. Price \$1.50. New York: Macmillan Company, 1912.

Compared with several of the continental countries, England began late to develop a program of social legislation. But under the present liberal ministry the late beginning has been more than neutralized by a progress that bids fair soon to put England in the van of industrial nations that are striving to raise the weak to the level of the strong. No more sympathetic nor telling picture of this movement could be outlined than this timely book affords. The problem of the child, of sweating, and of the unemployed, are portrayed from the standpoint of the legislation of the past decade; sickness and old age are set forth as sources of ills, both mitigable and removable by legislation and social action; and housing, municipal utilities, and the uses of land likewise are treated as objects of governmental concern. The old *laissez-faire* attitude has indeed disappeared, and in its stead has come the determination, seconded by action, that the bodies and spirits of men and women, who have sacrificed themselves for the race, shall, no longer, be trodden down by "the hungry generations."

Antin, Mary. *The Promised Land.* Pp. xv, 373. Price \$1.75. Boston: Houghton, Mifflin Company, 1912.

A remarkable story written in simple and fascinating fashion. It is the autobiography of a woman who was born in Russia, a Jewess, whose family lost its possessions and sank into abject poverty. The author came with her family to America early in her teens. The gradual translation as it were into an American with most intense pride in our country and hopefulness as to its future is most encouraging in these days when the air is full of problems. The volume deserves wide reading. In quality it compares favorably with the best of such immigrant interpreters as Riis and Steiner.

Bolton, R. P. *Building for Profit.* (2d Edition.) Pp. 124. New York: The DeVinne Press, 1911.

The second edition of Mr. Bolton's work which has just appeared, while retaining the valuable portion of the first edition, is more valuable through the introduction of new matter. Real estate owners and operators have come to regard the question of the suitability of buildings for different locations as a scientific matter, upon the correct solution of which the profitableness of the investment directly depends. Mr. Bolton has pointed the way by which the ordinary individual can work out this problem for himself.

Besides a great wealth of material upon the cost of buildings and the depreciation and operating expenses of various types of building, Mr. Bolton lays down formulas by which the expediency of different building plans may be decided, and a suitable type of building determined. This volume should be in the library of every one interested in central business real estate, and of every real estate broker dealing in this class of property.

Bond, F. D. *Stock Prices: Factors in their Rise and Fall.* Pp. 124. Price \$1.00. New York: Moody's Book Department, 1911.

Bowker, R. R. *Copyright: Its History and Law.* Pp. xxiii, 709. Price \$5.00. Boston: Houghton, Mifflin Company, 1912.

A book much needed, and one which will be of distinct value to lawyers, publishers and laymen generally, is found in the work on Copyright, presented by Mr. Bowker. It shows an intimate acquaintance on the part of the author with what might be called "copyright atmosphere," which is at once useful and interesting. Being intended for lay as well as law readers, its methods are quite unlike Scrutton and Macgillivray, and it is also quite dissimilar to Mr. Drone's work, which, however, had a somewhat similar purpose. The growth of the law in exactness, both by reason of judicial interpretation and the Code of 1909, is well exhibited by a perusal of this and the last named work. Mr. Drone discussed with great learning questions then quite indeterminate and Mr. Bowker is able to state the law definitely.

As a whole, the work discloses infinite industry and brings together a mass of valuable information concerning the law of literary property, much of which is not to be found in law books and decisions.

Brehaut, E. *An Encyclopedist of the Dark Ages—Isidore of Seville.* Pp. 274. New York: Longmans, Green & Co., 1912.

Burch, H. R., and Nearing, Scott. *Elements of Economics.* Pp. xvii, 363. Price \$1.00. New York: Macmillan Company, 1912.

Butler, N. M. *Why Should We Change Our Form of Government?* Pp. xiv, 158. Price 75 cents. New York: Charles Scribner's Sons, 1912.

President Butler's monograph is a collection of addresses in which are given the usual statements made by those who radically oppose the initiative, referendum and recall. President Butler says that the referendum would "degrade our legislative bodies and reduce them to intellectual, moral and political impotence." The initiative he avers to be "the most preposterous and the most vicious of all

the proposals that have been brought forward in the name of direct democracy." "All that can possibly be accomplished by the initiative is to strike the heaviest possible blow at representative institutions, and to remove the last inducement to bring able, reflective and intelligent men to accept service in a legislative body." He thinks that "the recall will assist the initiative and referendum in diminishing the consistency, the intelligence, and the disinterestedness of government, because it will help to keep high-minded and independent men from accepting nomination and election to public office." He believes that the proper procedure is to perfect our form of government but not to change it; though he points out no particulars in which our present plan even needs perfecting. "Our fathers" were endowed with rare insight by which they could lay well the "noble foundations" of our government; but to their children, so far as one can glean from the monograph, is not given sufficient insight to change even the details of the structure to be erected on the foundations the fathers "so nobly laid." The closing chapter is entitled *The Revolt of the Unfit*, a revolt that "primarily takes the form of attempts to lessen and to limit competition, which is instinctively felt, and with reason, to be part of the struggle for existence and for success."

Carlile, W. W. *Monetary Economics*. Pp. xii, 307. Price \$3.00. New York: Longmans, Green & Co., 1912.

This volume is made up partly of previously published articles and partly of new material. It is in large part a criticism of current economic theory, both from the standpoint of method and of foundation material. Only the last three chapters deal with matters of a concretely practical nature. As a fact, however, the whole book is an argument for the practicalizing of theory. Words and phrases in economic usage are condemned unless they coincide with usage in the practical business of life. "Marginal" terminology is flouted on this ground. The reasoning of the marginalists is likewise condemned on several grounds. In the first place a monetary society, such as ours, cannot be interpreted in terms of a Crusoe economy, and in the second place the simplified psychology of mathematically inclined reasoning on value cannot supply an explanation of social value. The gap between artificially simplified reasoning of this description and the realities of life is too wide to be bridged by the casual efforts of those who translate the law of diminishing utility into terms of price. What such a casual attempt seems to bridge "is in reality untold millenia of life and progress."

The Catholic Encyclopedia, Volume XIII. Pp. xv, 800. Price \$6.00. New York: Robert Appleton Company, 1912.

Deiser, G. F., and Johnson, F. W. *Claims; Fixing their Values*. Pp. ix, 158. Price \$2.00. New York: McGraw-Hill Book Company, 1911.

Ely, R. T. *Monopolies and Trusts*. Pp. xi, 284. Price 50 cents. New York: Macmillan Company, 1912.

Grice, J. Watson. *National and Local Finance*. Pp. xxiv, 404. Price 10s. 6d. London: P. S. King & Son.

Guthrie, Anna L. (Ed.). *Library Work Cumulated, 1905-1911*. Pp. 409. Price \$4.00. Minneapolis: H. W. Wilson Company, 1912.

Harvey, B. C. H. (Translated by). *Eugenio Rignano upon the Inheritance of Acquired Characters*. Pp. 413. Price \$3.00. Chicago: Open Court Publishing Company, 1911.

The interest that social thinkers have in the doctrine of acquired characters makes Dr. Rignano's book important. It is, however, of little use except to those who have already a fair knowledge of biology. It shows that the defeat of the followers of Lamarck is not so decisive as it seemed a few years ago. Of more importance than the book is an appendix on the mnemonic origin of the effective tendencies. This chapter has no technical difficulties and is a fresh and invaluable statement of the newer memory doctrines. No social thinker can afford to be ignorant of the ideas there presented.

Hemmeon, J. C. *The History of the British Post Office*. Pp. xi, 261. Price \$2.00. Cambridge: Harvard University Press, 1912.

Henderson, Charles R. *Industrial Insurance in the United States*. Pp. x, 454. Price \$2.00. Chicago: University of Chicago Press, 1911.

This second edition of Henderson's *Industrial Insurance* contains few changes from the text of the first edition. Statistics have in some cases but not all been brought down to date. In the summary of European laws this change has been made. In the chapters on The Insurance of Fraternal Societies and The Employers' Liability Law there was an opportunity to note changes of considerable importance. The new fraternal law passed by some fifteen or more states up to the present time might have been included but was not. Likewise the enormous amount of legislation dealing with changes in the law of liability and substitution of plans of compensation was noted to the extent only of inserting in the appendix two new sections giving the text of the New York laws of 1910 providing (1) amendments to existing laws coupled with an elective compensation plan, and (2) a compulsory compensation act for certain hazardous industries. (The latter has already been declared unconstitutional by the New York Court of Appeals.) These omissions may have been deliberate, but one can hardly help wishing they had been included.

The changes of most importance made in this reprint were (1) the revision of the statistics of private industrial insurance companies, bringing them down to date; (2) the enlarging of the bibliography by the addition of several excellent books and government reports which have come out since the first publication of the volume; and (3) the changes made in the Employers' Benefit Association Plan of the International Harvester Company by the addition of an industrial accident department.

Hollingsworth, C. M. *From Freedom to Despotism*. Pp. xiii, 238. Price \$1.00. Washington: The Author.

This book has at least the distinction of creating and supporting a unique thesis. The author's thesis is that "the future course and ultimate outcome of the great modern movement toward universal democracy" is to result ultimately "in the virtual disappearance of free government," and the substitution of despotism for freedom. The word despotism the author uses "not in an opprobrious sense, but as a general term to denote any form of accepted and necessary absolutism

or autocracy, with little or no constitutional limitations on the arbitrary powers of the individual ruler." The author finds his chief arguments in support of his thesis in the dependent relation between economic conditions and "the form and spirit of political institutions." His conclusion that our republic will not last longer than 1950, he says, is "one arrived at as a strictly reasoned induction from the indisputable facts of the general economic, social and political history of nations, from the earliest times down to and including the conditions and tendencies of the present moment." He discusses the dangers of democracy and economic concentration and finds that the "inevitable consequences of the concentration of wealth" is "social degradation, poverty and pauperism." The transition from freedom to despotism, to "a modernized Cæsarism," will take place through the "declining power and prestige of American legislative bodies" accompanied by gradual increase in the power of American executives. "Despotism is a consequence of economic fixity; freedom the consequence of economic development." "When the great modern movement of economic development—world-embracing in its scope, and converting to man's uses the highest forces of nature—has been completed, an era will be reached in which despotic government will be practically universal."

Inglis, A. J. *The Rise of the High School in Massachusetts.* Pp. vi, 166. New York: Columbia University, Teachers' College, 1911.

Dr. Inglis traces in detail the origin and development of the high school in Massachusetts from 1821, when the English Classical High School of Boston was begun, to 1860, when public secondary education seemed to have been completely established. Being an historical survey, the author makes no attempt to connect the conditions studied with the present status of secondary schooling in the state.

While the first public high school was established in 1821, it was not until after the enactment of the school law of 1827 that the growth of the modern high school began. Then, as now, Massachusetts was the leader in popular education, providing higher schools "with the design of furnishing young men of the city (Boston) who are not intended for a collegiate course of study, and who have enjoyed the usual advantages of the other public schools (grades), with a means of completing a good English education to fit them for active life." It is interesting to note that some of the problems of to-day, such as making the high school the poor man's college and the danger of college domination, were vital issues then.

The study provides in its outlines of the development of the different subjects of the curriculum and the tables of studies with the number of students in each at different epochs, a valuable means of comparison with the conditions and problems of to-day. If the study of history aims to give the student a basis of comparison between the present and the past, then this study is a good piece of historical research.

James, J. A., and Sanford, A. H. *Government in State and Nation.* Pp. xiv, 341. Price \$1.00. New York: Charles Scribner's Sons, 1912.

This well known text appears in a revised edition in which the references and political developments are brought down to 1912. As in the first edition the object

is to give a short account of governmental activities for use in secondary schools. The chapters are in language which the beginner can easily understand and show an excellent sense of proportion.

Kenngott, George F. *The Record of a City—A Social Survey of Lowell, Massachusetts.* Pp. xiv, 257. Price \$3.00. New York: Macmillan Company, 1912.

If this survey succeeds in doing for Lowell what the Pittsburgh survey did for Pittsburgh, Lowell will be, indeed, a city coming to itself. The author's treatment covering history, housing, health, living standards, industrial conditions and recreation, is broad, and yet sufficiently based on fact to make it worth the careful attention of the student. As a typical New England textile town, Lowell furnishes an interesting example of what has been produced by a century of American industrialism. Most of the houses are good, some are extraordinarily bad; city health has been constantly improving; recreational facilities are increasing in number; the city is in the grip of an absentee landlordism. "The real proprietors of the mills, the stockholders, live elsewhere, and have little thought of Lowell save to draw dividends. They have builded their tower of Babel on the banks of the Merrimac and the pride of life, the thirst for gold, the demand for cheap labor, have brought hither a confusion of tongues that no Pentecost of love has yet transformed into a harmony of single devotion and united effort." The outlook for Lowell is not gloomy, the author is even optimistic. "The people," he writes, "are for the most part well fed," yet the city lacks a spirit of civic solidarity without which long permanent improvement in city conditions seems impossible. While the author has failed to make the best use of his statistical material, and while many of his facts are stated in questionable English, the study is, on the whole, effective and valuable.

Lowry, E. B. *False Modesty.* Pp. 110. Price 50 cents. Chicago: Forbes & Co., 1912.

Among the many recent attempts to state the problem of sex education, and the necessity for sex hygiene, none is more clearly and popularly put than that which Dr. Lowry makes in his little book. While the material is directed primarily against the white slave traffic, the emphasis is laid on remedies rather than on conditions, and the remedies suggested lie wholly within the realm of education.

Lutes, Della T. *The Child, Home and School.* Pp. 307. Price \$1.25. Coopers-town, N. Y.: The Arthur H. Crist Company, 1911.

"We are a nation of extremes," writes the author on the first page of her foreword, and she comes close to proving her assertion by the extreme character of many of her statements. Her book, dealing with the child from the individual, personal standpoint, takes up the various phases of home and school discipline and education. The style is popular and rather unconvincing. The book will constitute one drop in the great tidal-wave of educational literature which is sweeping over the country at the present time.

Magruder, F. A. *Recent Administration in Virginia.* Pp. 204. Baltimore: Johns Hopkins Press, 1912.

This monograph described the expansion of administrative functions in the government of Virginia since the adoption of its present constitution in 1902. In a few

cases the administration is traced from ante-bellum days, and the existing administration is frequently contrasted with that based upon the previous constitution of 1869.

The main topics dealt with are: The Electorate and Elections, Education, Charities and Corrections, Public Health, Agriculture, Public Service Corporations, and Finances. The chapter on Education is most comprehensive and seems to have been of chief interest to the author. The most striking feature of government in Virginia is its conservatism. The suffrage is limited by a series of tests that exclude many, and there is a total absence of the newer devices of government—initiative, referendum, recall and the like—which find favor in some quarters. The author, in general, is in thorough sympathy with the Virginia ideals of government as applied to the conditions in that state.

In the final chapter the author points out the common fault of decentralization, and urges further coordination among the departments and more extensive authority for the governor. In addition, it is suggested that heads of departments should have the right to speak before the general assembly, and that the assembly should have the corresponding right of compelling heads of departments to appear before it and answer questions.

New York Society for the Prevention of Cruelty to Children. Thirty-seventh Annual Report. Pp. 117. New York: By the Society, 1912.

The Princess. *Traveller's Tales.* Pp. xii, 296. Price \$2.00. New York: G. P. Putnam's Sons, 1912.

Proceedings of the Third National Conference on City Planning. Pp. xi, 293. Price \$1.25 (libraries and civic organizations); \$1.50 (individuals). Boston: National Conference on City Planning, 1911.

The papers presented at the Third National Conference on City Planning, held in Philadelphia in May, 1911, together with the discussions of the various topics which occurred, have been published in book form. This volume constitutes a most important addition to the fund of information upon this question. The result of the first conference was published as a government document, while the second conference was published through private enterprise. Judged from the standpoint of the quality of the discussions, their usefulness to those interested in the subject, and the scope of the topics considered, the third conference contributed far more of value than either of its two predecessors.

Among the subjects considered in the volume are the Municipal Real Estate Policies of German and English Cities; The Designing and Location of Public Buildings; The Relation of Buildings to Street Widths; The Water Terminal Problem; Condemnation, Assessments and Taxation in relation to City Planning, and Problems of Street Widths, Street Surface and Street Location.

Scott, William A. *Money and Banking.* Revised Edition. Pp. ix, 377. Price \$2.00. New York: Henry Holt & Co.

The changes made in this last edition, which is the fourth, are such as to commend themselves to the reader. The description of the leading banking systems of the world has been expanded from a scant thirty pages to four times the space—a distinct advantage in view of present tendencies to find in foreign countries

suggestions for the improvement of our own system. The addition of chapters on Credit and The Money Market are important because of the glimpse they give of the *modus operandi* of modern business. It is to be regretted that the statistical tables in the appendices were not brought down to date.

Squier, Lee W. *Old Age Dependency in the United States.* Pp. xii. 361. Price \$1.50. New York: Macmillan Company, 1912.

"The principle of old age pensions," the author maintains, "has been accredited universal testimony of approval in every country of its adoption, hence, the advocates of the old age pension principle in this country are confident that the time is opportune for pressing the campaign for its inauguration here" (p. 338). Insurance experts believe that annuities would be of a much more effective form of insuring against old age than old age pensions, and practical insurance men are constantly asking why working people do not purchase annuities. The answer is not far to seek, for income is, in general, so near a subsistence level that the average wage-earner finds it practically impossible to lay by any considerable sum for a "rainy day." The statistics of average income do not afford much ground for hope that working people will take a general advantage of the opportunities available for purchasing annuities for old age. Despite the pension features of labor organizations, industrial establishments and transportation companies, the author finds a large amount of old age dependence for which the superannuated man or woman is not responsible, but which must nevertheless be borne by society or by the relatives of old people. Hence, some form of old age insurance seems necessary. The author, therefore, concludes his statement with bills to provide old age pensions, and to organize an old age home-guard in the United States army, introduced into congress by Mr. Berger of Wisconsin and Mr. Wilson of Pennsylvania. Although no general interest has ever been aroused in old age pensions in the United States, the author has done a piece of work which should bring the matter prominently before the public, since both his facts and his arguments abundantly prove his case for old age pensions.

Sterne, S. *Railways in the United States.* Pp. xiii, 209. Price \$1.35. New York: G. P. Putnam's Sons, 1912.

Vecchio, Giorgio Del. *Il Fenomeno Della Guerra E L'Idea Della Pace.* Pp. 99. Torino: Fratelli Bocca, 1911.

Professor Giorgio Del Vecchio, of the University of Messina, has given us this interesting little pamphlet on the Phenomenon of War and the Idea of Peace. He has chapters on the causes of war; on the consequences—especially the benefits—of war; and then a chapter on the theoretical conceptions of peace. These he considers under the following heads: The Esthetic; The Imperialistic and Absolutist; The Empirical Political and, finally, the Juridical.

Westermarck, E. *The History of Human Marriage.* Pp. xx, 644. Price \$4.50. New York: Macmillan Company.

Whitten, R. H. *Valuation of Public Service Corporations.* Pp. 800. Price \$5.50. New York: Banks Law Publishing Company, 1912.

For several years past students of public affairs have been awaiting the publication of a book of this character. The problem with which Dr. Whitten

deals is fundamental to the question of control over public service corporations. From whatever point of view we approach the problem we are confronted with the difficult question of agreeing upon some guiding principles for the valuation of the property of the public service corporations. Dr. Whitten has made a pioneer effort in this field, and the broad grasp that he has shown has enabled him to render a service of the first magnitude not only to students of political science but also to legislators and to all those interested in the work of the public service commissions that have been established during recent years. The work takes up every phase of the question of valuation, discussing very fully the problem of market values, actual cost and cost of reproduction as standards of value for rate purposes. The valuation of real estate and franchises is also taken up with great detail and also the manifold problems connected with depreciation. In every case the author deals not only with the legal decisions but also with the economic principles involved, and his work, therefore, represents something of far greater and more permanent interest than a mere survey of judicial opinions.

Wright, W. Arter. *The Moral Conditions and Development of the Child.* Pp. 210.
Price 75 cents. New York: George H. Doran & Co., 1911.

A book for thoughtful people seeking the principles upon which moral development depends. The discussion of the heredity of sin, in which the author places himself upon the side of modern science, is a most valuable contribution. He refutes the old Christian doctrine that the child is the product of sinful passion. No child ever comes into the world handicapped by original sin; but he admits the evident fact of physical degeneracy. Sinfulness is an individual condition and a resultant of environmental forces, particularly training. The struggle against sin "is just as strenuous and fateful now as ever." The fruit of the spirit is self-control now as in the time of Paul. The emphasis placed upon the value of personal responsibility is gratifying in these days when we seem to have lost sight of the once eminent doctrine of the freedom of the will. It is to be hoped that some of the ardent adenoid removing type of regenerators of society will read and ponder the arguments and proofs of this little book. It is well to recognize the determining influences of physical irritation, mal-assimilation and the suggestion of unfavorable social conditions upon the immature, but we should never lose sight of the fundamental principles of self-control and responsibility.

The thought of the book is essentially theological. In addition to the extended discussion of the heredity of sin, the writer discusses the birth of the spiritual and the moral sense, at what age and under what conditions, the periods of spiritual development, the scientific era of religious instruction, the baptism of children and how can a child be saved. Parents, preachers and others who are looking for a scheme of moral and religious training which attempts to harmonize modern liberal religion and science will find much to satisfy them in Dr. Wright's views.

REVIEWS

Hill, David Jayne. *World Organization*. Pp. ix, 214. New York: Columbia University Press, 1911.

The author of this book, distinguished in diplomacy and in scholarship alike, has put into it the conclusions drawn from his long and varied diplomatic experience and the fruits of his wide and deep research. His object was to state as concisely as was consistent with lucidity the origin and development of world organization, considered in its juristic sense, as affected by the nature of the modern state; and this object he has admirably fulfilled.

"World organization" he defines to be "the task of so uniting governments in the support of principles of justice as to apply them not only within the limits of the state, but also between states." Starting with the Roman imperial idea of the essential unity of mankind, he traces the rise of the modern state,—neither from some transcendental source, nor from any Cæsarian operation,—but from the nature and social needs of man. With such an origin, and developed by the pressure of the same necessities, the modern state has naturally become the embodiment and protagonist of jural law as the security for human rights; and in this capacity, it is the greatest of human institutions, and is entitled to the highest respect and perfect loyalty.

Because it is the protagonist of law, and for that reason only, the state has been equipped with armaments on land and sea; but, equipped with these and other powers, there is a real peril lest it should regard itself as superior to law and use its powers to act "as it sees fit." Its origin and growth, and its *raison d'être* alike, belie the theory that it may use its "sovereignty" both to command the obedience of its nationals to law, and to assert its supremacy above the law in its international relations.

The assumed "right" of absolutism, asserted by four or five hundred potentates some three centuries ago; Machiavelli's theory of absolutism; and Bodin's conception of sovereignty as identical with "majestas," that is, absolute and perpetual power: have all exerted their influence to place the state within the realm of might and outside the pale of right. Even in our own time, such writers as Ruemelin and Lord Lytton regard the state as having "no body to be kicked, and no soul to be damned," and as being therefore neither moral nor juristic.

But Althusius, brought face to face with the formation of the Dutch Republic, placed sovereignty within that sphere in which alone it can possibly exist in the modern state, the sphere of law. Another great Netherlander, Hugo Grotius, applied to the state the same juristic idea in the wider field of its international relations, and placed it upon the bed rock of "the dictates of right reason." This principle, feebly applied in the Peace of Westphalia, and supported by the innumerable disciples of Grotius in every civilized land and century since, has triumphed within the science of politics and is asserting itself more and more frequently and emphatically in the practice of national government and in international relations as well. As a corollary of the triumph of this conception of the state, true patriotism has come to be loyalty to the principles

of justice and equity, on which the whole authority of the state reposes; while even in the pursuits of national "interests," or in the protection of its citizens' foreign "interests," the state must maintain its juristic character, and its diplomatic agents must not be egged on to exaggerate "interests" into "rights."

In these days of "dollar diplomacy," it is truly a noble and a much-needed task to emphasize the fact that the most vital of "vital interests," consists in the maintenance of the state's juristic character; and that across the frontier there lives, not a "natural enemy," the legitimate object of fear and distrust, but another civilized people, with a jural consciousness as deep, as enlightened, and as anxious as our own.

Dr. Hill's sketch of the growth of the modern conception of the family of nations is both brilliant and eloquent. The influence on this growth of the Mediæval Church, of Suarez, Ayala, Gentilis and Locke, of the Peace of Westphalia and the Congresses of the Nineteenth Century, and, above all, of the two Hague Conferences, is succinctly estimated.

The past and present guarantees of the security of this international family, are considered under the heads of Equilibrium (or balance of power), Federation, Intervention, Neutralization, National Armaments, and Mutual Guarantees (or international jural relations). Equilibrium is dismissed as inadequate and unreliable. The great national benefits flowing from federation are emphasized; but universal federation is held to be impeded by political and other inequalities between most nations, and national independence is defended,—provided it be accompanied by qualifications for self-government,—as essential to national and world welfare. Intervention and supervision, on the part of the Great Powers, is held to be justifiable, provided it is accompanied by such guarantee of high purpose as the open door of trade. Neutralization is considered useful, but as applicable only to small and relatively unimportant states, or to territories liable to be brought into the sphere of rivalry for colonial expansion. National armaments are praised for their aid to progress in the past, and are regarded as a necessary evil in the present, but "overgrown armaments" are denounced as menacing to the future preservation of peace.

None of the above guarantees is regarded as adequate to present international relations, and a jural guarantee, or the judicial organization of peace, is sustained by a strong and persuasive argument. The modern state is shown to be, not only peculiarly adapted to enter into international juristic relations,—because it is the embodiment of law and founded upon it,—but also because the *raison d'être* of its existence is the promotion of civilization, which requires that force everywhere shall be subordinated to justice. The first Hague Conference brought the nations to agree to a series of checks upon their methods of warfare; while the second Hague Conference marked the defeat of the theory that sovereign states are arbitrary entities governed in their relations with each other by no authoritative maxims of law, and the triumph of the principle that the state is a justiciable person. The fallacies of "absolute sovereignty" and the "right of war" as applied to the modern state, are opposed by the subordination of the state to judicial principles, and the inviolability of the innocent person and the innocent state alike.

The extent to which the "right of war" has been denied and the "duty of

law" asserted is seen by the adoption of the Porter Proposition and the progress made in the growth of arbitration and in the activities of arbitral tribunals. But the keystone of the nearly completed arch of justice is still wanting; this, Dr. Hill believes, is a mutual guarantee on the part of sovereign states that they will not resort to force against one another, so long as the resources of justice contained in the Hague Conventions have not been exhausted. The establishment of the Court of Arbitral Justice and the prerequisite codification of international law would seem to others the *sine qua non* of permanent peace; while President Taft is seeking it through the development of an international grand jury which shall bring disputants, *volens*, into court.

The final impression left by this stimulating treatise is that its optimism as to future international relations is well founded upon the recent enormous extension of international trade and the development of law in the modern state, both of which have greatly facilitated the mutual understanding, and promoted the mutual obligations, of the nations.

WM. I. HULL.

Swarthmore College.

Hinsdale, Mary L. *A History of the President's Cabinet.* Pp. ix, 355. Ann Arbor: University of Michigan, 1911.

After a brief introduction on The Origin of the Cabinet, the major portion of this volume consists of successive accounts of the cabinets of each President, in historical order from Washington to Taft. Though in each administration most space is ordinarily devoted to details surrounding appointments and changes of departmental heads, more significant discussion is introduced where opportunity is discovered for remarking some distinctive change or tendency with respect to the general position of the cabinet in government, its relation to the President, to Congress, or to party politics. These sketches cover an average of six or eight pages each, unimportant cabinets, such as those of Van Buren and Benjamin Harrison, being disposed of in two or three pages, while from fifteen to twenty pages are given to the more eventful cabinet histories of such administrations as those of Jackson and Lincoln.

Following this detailed history, three brief sections embody the author's conclusions on The Principles of Cabinet Making, The Cabinet and Congress, and The Cabinet and the President. This recapitulation appears most effectively under the second topic, where the various formal and informal methods of approach that have grown up between Congress and the Cabinet are sketched clearly and interestingly.

The author seems to have been careful in all particulars, covering the pertinent facts accurately, and manifesting close acquaintance with original and secondary sources. The work for the most part holds closely to the facts, and is dominated by no main hypotheses. Not much of synthetic imagination is employed in the treatment. There is very little of relation to general principles of government or to historical antecedents of our cabinet. Only subordinate reference is made to the political needs that have made the cabinet a natural, if not inevitable, product of custom. The author seems to be concerned with the practices affecting the cabinet rather than with principles and ten-

dencies which these practices reveal, or than with the relations they bear to the general character and efficiency of our governmental organization.

As the plan of the bibliography is comprehensive, there are several notable omissions. For example, among special treatises, Grover Cleveland's "Presidential Problems" and Goodnow's "Principles of Administrative Law in the United States" would seem to have deserved a place. Several recent departmental histories, issued from Washington, are omitted. Gaillard Hunt's "Department of State" (1893) is listed, but not his more recent articles on the same subject in the *American Journal of International Law*. The "Register of Debates in Congress" (1824-37) does not appear in the list of documentary materials; and no reference is made to Van Tyne and Leland's "Guide to the Archives of the United States in Washington."

F. W. COKER.

Ohio State University.

Hobhouse, L. T. *Social Evolution and Political Theory*. Pp. ix, 218. Price, \$1.50. New York: Columbia University Press, 1911.

What is "progress?" How far has it been realized? What are the prospects? The ultra-biologists are wrong in assuming that evolution is necessarily progress. Ethical values are social, not biological; and the sociologist deals only with "the social fact as distinct from the biological and the psychological." Its vehicle is not heredity but tradition: society's achievements. These are psychological, but not exclusively; nor entirely imitative. "Progress is not racial, but social."

The interest shown in eugenics led the lecturer to give two hours to an expansion of his cautions but not hostile critique. Rational selection of the "best" as the "fit," by segregation, through which there is least net misery, is the logical solution of the dilemma between natural and social evolution. But the premises are doubtful. What is social worth? What defects are biological? The elimination of a bad trait may carry with it several valuable traits. Social worth lies in proportion and blending, more than in "unit characters." Social status indicates inertia or social selection, not necessarily degree of biological fitness or social worth. Society must be perfected before the socially undesirable and the biologically unfit are identical. Biology itself holds variations insignificant in heredity, beside mutations. Biological improvement is subject to social progress, which increasingly preserves valuable mutations, and which will add to our knowledge of which variants should be destroyed.

The fatal treadmill of the Theory of Value is avoided by assuming rather daringly that good is in (1) some kind of life, (2) the fuller the better; (3) some form of happiness; (4) some form of self-realization, and (5) the completely social life—all subsumed in the idea of harmony. This modified organism-concept of society depends on the social evolving of intelligence. The social mind, its highest product, adjusts society to its physical environment. Harmonious social growth, like that of the individual, consists in increased scope, articulate-ness, unity, and self-conscious direction.

"Mutual interest," or "consciousness of kind," in three phases of kinship, authority and citizenship, is the "descriptive formula" (not "law," though the

distinction seems doubtful) underlying political and other evolution, and leads to the concept of democratic empire. "Citizenship" and "the state" are used only for the third phase. Evolution shows net progress, but no assurance for the future. It is boldly shown that progress has consisted in establishing conditions of self-direction, within limits of our material and purposes; and hope lies in ourselves. "The consciousness of unity profoundly affects the unity itself." The state must increase liberty by adjusting restraints: *laissez faire* was good only against external restraint. Minorities must yield only where uniformity is necessary. The rights of man are based on the common good. Activity which depends for its value on spontaneity should be free; but expediency is the final test.

Such is the argument presented by Prof. Hobhouse, in many features recalling Prof. Ward's and Prof. Giddings' theories. It is odd that the word progress, prominent in the text, does not appear in the rather vague title.

THOMAS D. ELIOT.

University of Pennsylvania.

Holmes, John H. *The Revolutionary Function of the Modern Church*. Pp. xi, 264. Price, \$1.50. New York: G. P. Putnam's Sons, 1912.

This "firebrand of his denomination" shows prophetic zeal for social justice, but he is more effective in speech than print. His exclamations, repetitions, and platitudes betoken haste. His sudden drops from impassioned eloquence to the level of the sophomoric outline and the reference library, are disconcertingly like a college debate. Like other "high churchmen," he is quite willing to dogmatize upon the authority of indiscriminate quotations from his own demi-gods.

"The inestimable value of each immortal soul" is "the one great principle which has animated the . . . Church from the beginning" (p. 15), yet "every orthodox scheme of salvation has been founded" upon a "low and repulsive estimate of human nature" (p. 22). He claims that the mediæval church was without social interests! The individual minus his environment "is an abstraction not known to experience" (p. 40), and heredity is dismissed "as only the . . . environment passed along" (p. 225); yet "man is essentially good, not bad" (p. 141); again, "man alone . . . can change the world to suit himself" (p. 59), of course the supreme individual will is "never wholly eliminated" (p. 255), and conditions, due to human greed, are blamed upon "the men who are the creators of the conditions." If crime be socially predetermined, this shifty logic might exonerate employers; or, if the antidote of sin is income, why are the rich the worst true criminals? He praises Jesus' poverty as the condition of his success.

The "inspirational" theory of church activity he thinks "fatal to the social interpretation of religion" (p. 239); but his own theory of "directing" already available energies is hardly distinct from it. For there are many who deny total depravity and "soul rescue," who stop short of wanting all institutions to be "all things to all men." He thinks "what is fitting work for the Christian individual is fitting work for the Christian individuals organized—which means the church," a dangerous generalization.

The last four chapters are excellent. While they might prejudice a careful

conservative, they are highly recommended for the persuasion of prospective converts to socialized religion.

THOMAS D. ELIOT.

University of Pennsylvania.

King, Henry C. *The Moral and Religious Challenge of Our Times.* Pp. xviii, 393. Price, \$1.50. New York: Macmillan Company, 1911.

A significant factor in the spread of the new philosophy of social endeavor is the increasing number of books written from that viewpoint by leaders of thought in the Protestant Church. The latest work of President King, of Oberlin, reviews in a comprehensive way, at once intensely religious and searchingly pragmatic, the possibilities of realizing Christian democracy in the modern world. An irrepressible idealist, Dr. King's guiding principle is "reverence for personality." The "Challenge of Our New External Conditions" is first taken up. Our stupendous economic development and the consequent trends toward co-operation and democracy, are briefly discussed. All indicate "a growing sense that the old opposition between an atomic, nihilistic individualism and a swamping socialism is out of date and should be transcended." These changes bring greater leisure and the possibility of achievement; dangers are involved in the conflicting conditions and ideals, and the need is for a "social conscience to grapple with large problems." The second large division is "The Challenge of the New Inner World of Thought." Natural science has shown "the need of knowing the will of God and doing it" and has brought "a new sense of reality and hope into the ideal realm." The historical spirit "requires the ability to enter sympathetically and understandingly into the life-thought of other peoples and periods." The new psychology emphasizes "the unity of man," "the central importance of will and action," and "the primacy of the personal." Sociology would discern "the laws of the permanent progress of the race;" it "builds directly upon the social consciousness, and seeks to make that consciousness prevail." Comparative religion reveals the value of the "entire religious consciousness of the race." The new theology aims to realize Christ's ideal of social fellowship and individual independence. Among the dangers here are "false materialism" and the "prejudiced conservatism" that denies truth. The need is for "clearer insight," "breadth of view," and "concrete expression of spiritual life in deed."

"The Lessons of the Historical Trend of Western Civilization" are next taken up. The ancient exclusive state and Christianity's reverence for personality, as supplemental to brotherhood, are treated. The perversion of the latter ideal is shown in asceticism and the philosophy of a "dominant church." Its realization is presaged by the new tolerance and fuller equality of men.

A fourth division of the book is entitled "The Meaning of the Challenge to Our National Life." The New Puritanism adds to the "conviction of Divine Commission," and "the feeling of responsibility and accountability," two of the "Great Positives of the Puritan Spirit," the "Great Positives of the Modern Spirit"—a "genuine love for men," and a "perception of the breadth of life." In the light of the guiding principle, Race Antagonisms are then discussed. The cultivation, by the negro race, of self-respect and pride in its unique endow-

ments for music and religion is urged. A plea is made for giving the negro opportunity for full development in "self-support," "self-knowledge" and "self-control." To the whites, there is the need of "entering upon a sympathetic understanding into the life and thought of the other race," and of "finding some larger basis of agreement "that will avoid hatred and resentment. Only when the leaders of both races work together "with respect for mutual liberties," and the use of the "indivisible inheritance," for the uplift of all, will the negro become a "helpful element of the national life."

"A truer democracy" must be realized, "to be loyal to the principle underlying civilization." "The use of power and knowledge" is urged "to allow the possibility of each coming to his own best," "for the common good." A "Democratic Policy" is discussed regarding the conquest and use of natural resources, the control of public utilities, and concentrated wealth and the elimination of social maladjustments. The author declares that "democracy is still honestly our national ideal, passionately desired and pursued." If this "faith and hope," "commands the conscience and will of each individual" and "is accompanied by a scientific study of conditions, neither the individual nor the nation can fail." The last chapter deals with the triumph of the author's ideal in international relations. The duality of economics and religion in western civilization makes it inevitable that a religious world movement, especially in the Orient, must follow commercial exploitation.

This labored review shows an inevitable shortcoming of the book. In small compass, the author has undertaken a tremendous task and could develop his many-sided theme only in barest outline. He unites, systematically and effectively, points of view which have too often been opposed. Some will think that he becomes prolix in his reiteration of the central principle of reverence for personality, and falls into the alluring, but ancient and futile worship of heroes, when he calls for a "clearer recognition of man's heroic mould" or idealizes the "reinvigoration of the whole moral life of the people, under unselfish leadership." Certainly, his expressed faith in the power of the social soul fails when he declares the need of a repressive "imperative, severe moral and religious training." Again the terminology, consciously, perhaps, is often inconsistent. No attempt is made to distinguish, "moral," "ethical," "religious" and "social." Old concepts like "self-mastery" and "self-denial" are used as synonymous with phrases like "the awakening in men of the deepest and best." Surely we lose in clearness by the confusion of "self-subjection" and "limitless sacrificial cost" with the attractive Christian service that raises the individual into the life of the race. But Dr. King has portrayed vividly the possibilities of the Coming Kingdom and his convincing book will arouse many to faith in Christ's old, new religion of humanity.

FRANCIS D. TYSON.

University of Pennsylvania.

Lévy, Raphael-Georges. *Banques d'Emission et Trésors Publics*. Pp. xxiv, 625. Paris: Hachette & Co., 1911.

This book by the eminent French economist and professor in L'Ecole des Sciences Politiques, is an encyclopedia on the subject of banks of issue throughout the

world, with particular reference to their relations with public treasuries. It is, however, an encyclopedia with a moral, for one may read throughout the volume the moral that the issue of paper money and banks of issue should be divorced from government treasuries, and that governments should not have recourse to such banks for aid except in times of dire need. "Our work will be amply recompensed," says the author (p. 625), in the concluding chapter "if we have succeeded, by an impartial exposition of the facts, in convincing the reader of the dangers of state intervention, and in defining what ought to be the relations between institutions of issue and public treasuries. The former render their best services to the latter in proportion as their existence is independent, and their administration completely divorced from that of the finances of the state." While the book contains much which substantiates this conclusion, the reviewer cannot but feel that the strength of the author's convictions on this subject have colored somewhat his descriptive chapters, despite his effort to be absolutely impartial. Americans will not be surprised, though they will be ashamed, that many of the best examples the author gives of the evils of close alliances between the government and banks of issue are to be found in our national banking system.

The work is divided into two parts. Part I (comprising three-fourths of the book) deals with bank notes. It divides banks of issue into three classes devoting "a book" to each. The first embraces the banks in those countries which grant a monopoly of the issue privilege to one bank, such as France, Belgium, Holland and Austria-Hungary; the second embraces the banks of those countries which grant the privilege of issue to a limited number of banks, such as England, Germany, Italy, Canada and Mexico; and the third embraces the banks of those countries which grant the privilege of issue to an unlimited number of banks which are required to conform to certain uniform legislative restrictions. The United States is the only country coming under this class. Part II deals with government notes and divides the subject into two books, the one comprising countries like Russia and Sweden, which have a state bank, and the other, countries where the government issues directly notes to circulate as money, as the United States, India and Canada.

Each country's system is described historically, and the description is usually brought down to the year 1910. While for most countries descriptions are very brief, for the leading countries there is ample detail to afford one a good working knowledge of the system.

The book is characterized by an excellent style and by good sense of proportion. As one might expect in an encyclopedic work of this kind covering the entire world, there are a considerable number of inaccuracies. Among those discovered in the seventy pages devoted to the United States are the following: The second United States Bank was chartered for twenty years, not twenty-five (p. 430); the author identifies the Second Bank of the United States with its successor, the Bank of the United States of Pennsylvania (p. 431); the provision of the national banking act (revised statutes, section 5171) placing different maximum limits to amounts of circulation allowed banks based on amounts of capital stock was repealed in 1882, and did not continue to 1900 (p. 439); national bank notes are irresponsible enough to trade demands but not so irre-

sponsive as M. Lévy would have us believe (pp. 447, 465); there was a very widespread use of asset currency based upon commercial paper in the United States prior to 1863, although M. Lévy says there is no trace of such a thing in the organization of American banks up to the present time (p. 453); two and one-quarter per cent is not the rate of interest which banks must pay on deposits of postal savings bank funds, but the minimum established by law (p. 467). The rate paid from the beginning has been two and one-half per cent. The Second Bank of the United States was not established in 1815, nor was it ended by suspending payments in 1837 (p. 521); the total issues of greenbacks were 450 million, not 400 million (p. 522); greenbacks were not made legally convertible in 1875 and actually so before that date (p. 523); the act of 1900 does not declare the standard of value to be a dollar of 29.8 grains of gold .900 fine (p. 526) but a dollar of 25.8 grains; national bank notes to-day do not constitute nearly half the total circulation (p. 545) but more nearly one-fifth.

Despite such inaccuracies, the general impression given by the numerous descriptive and critical chapters is sound, and the book will prove a very useful book of reference upon a phase of modern banking which is of great, although of relatively declining, importance.

E. W. KEMMERER.

Cornell University.

Mercier, Charles. *Crime and Insanity.* Pp. 255. Price, 75 cents. New York: Henry Holt & Co., 1911.

Dr. Mercier, who has written numerous books on insanity and criminal responsibility, has attempted in this little book to discuss briefly the relation between crime and insanity. He discusses the main forms of insanity which he thinks lead to crime, drunkenness, feeble-mindedness, epilepsy, paranoia, general paralysis of the insane, melancholia. In treating these kinds of insanity he gives a good many concrete illustrations of how insanity causes crime. So far the book bears upon the subject and is of more or less value.

But the author also tries to work out a classification of crimes to which he devotes six chapters comprising more than half the book. This part of the book has very little to do with insanity and the classification of crimes which he evolves is very cumbersome and could be criticised in various other ways. In the last chapter he recommends that the question of whether or not insanity has influenced conduct in criminal cases should be decided by the jury which is rather strange inasmuch as the tendency of enlightened opinion to-day is in favor of putting these questions in the hands of impartial experts. Throughout the book there is a great deal of bad psychology. This is illustrated by the loose way in which he uses the word "instinct." For example, he defines what he calls "the social instinct" as being "the inherent repugnance to injure others in order to gain advantage to ourselves. It is the honesty that is preserved by an inherent repugnance to act dishonestly; the desire to avoid injuring others in mind, body or estate; the sympathy that is pained by injury done to others; the instinctive aversion to any act that is injurious to the social fabric" (p. 235). It will be observed that most of the principal psychological phenomena are confused in this definition.

MAURICE PARMELEE.

University of Missouri.

Oberholtzer, Ellis P. *The Referendum, Initiative and Recall in America.* Pp. xii, 533. Price, \$2.25. New York: Charles Scribner's Sons, 1911.

Dr. Oberholtzer has added to his splendid work on "The Referendum in America" four supplementary chapters entitled, respectively, The Initiative and the Referendum in the States; The Local Referendum, Home Rule for Cities, Commission Government, etc.; The Recall; and The Referendum *vs.* the Representative System. As all know of the high merit of the original volume it is necessary here to speak only of the supplementary chapters.

In these added chapters, the author is unfortunately no longer the investigator but the advocate. He has a thesis to prove and that, in essence, is that the Initiative, Referendum, Recall, Commission Government, etc., are all measures pushed by a "junta of lobbyists," "a socialistic group of agitators," "for socialistic purposes much closer to the hearts of their inventors." He sees in the movement only "an attack on the representative system." He admits evils and abominations in the representative system, to be sure, but declares them to be "evils of the people's own making." "Such abominations," he continues "are an accurate reflection of their own minds and morals." Even if this be true, and few indeed are the students of government who feel it is, is it not at least possible that these movements are the result of a desire on the part of the people to throw off their own "abominable" mistakes and chasten their own minds and morals? The author deplores that democracy is being "released from the checks which were established for it," but does not inquire whether those checks were ever sound in theory or have ever worked in practice. He believes all these movements to be the outgrowth of a "socialistic unrest" in the "frontier states"—like *California*—(just where individualism is strongest) and finds nothing akin to the movement in that foreign country, Philadelphia, in which he chances to dwell. His statements do not have always the merit of getting at the root of the matter.

CLYDE L. KING.

University of Pennsylvania.

Whetham, W. C., and Catherine D. *Heredity and Society.* Pp. viii, 190. Price, \$2.00. New York: Longmans, Green & Co., 1912.

The making of books whose object is to direct attention to the relation of biology to national life and character goes on apace. We may not rely on blind forces of nature which may produce good or evil types. Society must now control.

After a brief introduction, Variation and Heredity are described in the second chapter. Natural Selection is treated in the third. Formerly competition eliminated the weak. In modern civilization the great factor in selection is disease. As we come to control disease we may be weakening this selective act and thus injuring society by preserving the unfit. This does not excuse a neglect policy. It merely indicates the growing complexity of the case. In training persons for social work the role of heredity must be carefully taught.

The Biological Aspect of Religion is the suggestive title of the fourth chapter. The authors think that the materials for this discussion are not yet collected and they only hint at some of the probable results. Religious sanctions have

impelled self-sacrifice, have driven groups into battle and must have influenced survival. The history of the Jews is perhaps the best illustration. The survival value of Christianity is not yet clear. In some groups the birth rate is held up but in Protestant groups no sufficient incentive is found. In so far as present religion devotes itself to the failures of society, it will be a source of weakness.

The birth rate in England showed no artificial restriction till 1875. Since then there has been a marked change. If this means a decrease in families of ability, the future is ominous.

These positions sufficiently indicate the general attitude of the book. The authors feel that too much emphasis is to-day laid on schemes of social amelioration, on plans for equalizing opportunities and far too little on the biological basis of society. So in the later chapters, *The Position of Women*, *Education*, *Heredity and Politics*, *The Purpose of Life*, are treated. The discussion is always stimulating. The evidence opposed is often incomplete, the conclusions open to revision. This the authors frankly recognize. Therefore, without adding anything specifically new, the authors have produced a just and readable treatment of real issues that will interest and hold many people.

CARL KELSEY.

University of Pennsylvania.

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CONDUCTED BY ROSWELL C. McCREA

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VIII

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COLLECTED AND EDITED BY
ROSWELL C. MCCREA, PH.D.,
ASSOCIATE EDITOR.

THE CANADIAN INDUSTRIAL DISPUTES ACT

BY MARCUS M. MARKS,
New York.

The Canadian Industrial Disputes Investigation Act of 1907 was a natural development of the Canadian Conciliation Act of 1900 and of the Railway Labour Disputes Act of 1903. The former provided for the establishment of a Department of Labour and effected intervention in labour disputes through the personal efforts of the Minister of Labour himself. The next step, in 1903, was the authorization of boards of arbitration in railway labour disputes upon the request of either party. Neither side, up to this time, had given up, even for a day, the right to strike or lock-out.

On account of a serious strike in the coal mines of Lethbridge, Alta, in the winter of 1906-07, the Deputy Minister of Labour suggested a plan for the prevention of such occurrences in the future. This plan, elaborated into a bill, was presented to parliament by the then Minister of Labour, the Honourable Randolphe Lemieux, and became a law on March 22, 1907. It is often called the Lemieux Act.

This act recognizes the need of a well-established, dignified, official agency for the proper discussion of grievances and their adjustment without resort to strikes. While covering both public and private business, it draws a sharp distinction between them. It is framed to apply primarily to public utilities and mines where continuous service is of most immediate interest to the public; it reaches into private business only when both parties to a dispute consent to the acceptance of its friendly offices. Under the Lemieux Act, the government does not take the initiative in bringing about conciliation; the first suggestion for the appointment of a Board of Conciliation and Investigation (hereafter to be designated the Board) comes from one or the other interested party. The record thus far has shown that nearly all the applications for boards emanate from the employees.

Board Organization

A request from either employers or employees for the appointment of a Board, coming to the Minister of Labour with the statement that a strike or lock-out is impending, is promptly followed by the organization of such a Board under the supervision of the Department of Labour.

The side applying for the Board chooses the first representative; and if the other party does not nominate its representative within five days after due advice, the Minister of Labour appoints such representative. These two members then select a third party, usually a judge or other disinterested citizen, well-known and highly regarded by the public, and he becomes the chairman of the Board. In case the two members of the Board fail to agree upon a third, the Minister of Labour again asserts his power in the selection and appointment of the chairman. The Board thus organized at once proceeds to investigate the conditions of employment which were the cause of discontent about to break out into open strife.

Service Uninterrupted

During the time occupied by the investigations of the Board, the act provides that workingmen are not permitted to strike, nor are the employers allowed to reduce wages, increase hours or otherwise change the conditions of employment. Thus loss in wages is prevented, service continues and, what is still more important, evil passions are not aroused and accentuated as in time of strike. Investigation under conditions of employment and order is much more likely to proceed in the direction of equity and justice than if such investigation be undertaken at a time when both parties, as well as their friends and adherents, are laboring under the excitement of the abnormal conditions consequent to an open breach between employer and employed.

There are severe penalties imposed if service be interrupted during the investigation. Each workingman who strikes is liable to a fine of from \$10 to \$50 a day while out. The employer is liable to a fine of \$100 to \$1,000 a day if he disobey the law. An outsider who incites either party to break the law may be fined from \$50 to \$1,000 for each offense. The Board may summon witnesses, employ experts and investigate accounts. Sitzings are held in public or in

private as the Board deems wise. Expenses of witnesses are paid, and each of the members of the Board receives \$20 a day and expenses from the Department of Labour.

The main service of the Board is in bringing the disputing parties together and affording full opportunity to clear up misunderstandings. Explanations are mutually offered, grievances thoroughly ventilated and trade conditions discussed. There is full consideration of every vexed point. The high character of the members of the Board vouches for fair play and at the end of the investigation the published report makes a deep impression upon both sides and also upon public opinion.

Investigation—not Arbitration

There is no compulsory arbitration feature connected with the Lemieux Act. If both parties voluntarily agree to arbitration, well and good; but the act contemplates only investigation and publicity. After the report of the Board has been published, either party is entirely free to strike or lock-out; the law has been complied with when employer and employed permit the situation to remain unchanged until the end of the period of investigation. However, workingmen are quite unlikely to risk the dangers of a strike in the face of an adverse opinion of such a Board. Similarly, the employer will in almost every instance accede to the requests made by a fair tribunal. A strike or a lock-out is rarely undertaken when both parties are calm, when they have had proper opportunity to state their position and hear that of the other side. Amicable adjustment is far more likely under such circumstances; this has been the experience in Canada during the first five years of the operation of the Lemieux Act.

Five Years of the Act

From page 1056, *Labour Gazette*, issued by the Department of Labour, Canada, in May, 1912, I quote:

"During the first five years which elapsed between the enactment, in March, 1907, of the Industrial Disputes Investigation Act and the end of March, 1912, one hundred and twenty-four applications were received for the establishment of Boards of Conciliation and Investigation, as a result of which one hundred and ten Boards were established. In the fourteen remaining cases, the matters in

dispute were adjusted by mutual agreement whilst communications were passing with the department in respect of the establishment of the Board. In ninety-three out of one hundred and ten cases referred for investigation, the inquiry resulted either in a direct agreement between the parties or in such an improvement of relations as led to the settlement of the dispute. . . . There have been in all fourteen instances (out of one hundred and ten) during the five years, in which strikes have occurred after the reference of disputes under the terms of the act."

Regarding these fourteen cases, Hon. F. A. Acland, Deputy Minister of Labour, who has done splendid service under the past as well as under the present administration, and to whom I am indebted for much information, writes June 14, 1912: "In the majority of these cases the department received evidence showing that the inquiry had a very beneficial effect; in many instances the dispute ended on precisely the basis recommended by the Board."

Mr. Acland writes further, under same date, giving the following interesting details of the work accomplished under the Lemieux Act since April 1, 1912:

"Since the close of the financial year, there have been a number of boards established. I will briefly mention the cases:

1. "A dispute between the C. P. Railway Company and railroad freight handlers and railway clerks in the company's employ at Winnipeg. The number of employees concerned was placed at two thousand. The inquiry resulted in a unanimous report and an amicable adjustment of the dispute.

2. "A dispute between the Canadian Northern Coal and Ore Dock Company at Fort William and coal handlers numbering about two hundred. The dispute is largely a repetition of one occurring a year earlier where a satisfactory arrangement was reached by the Board. The report of the present Board has not yet been received, but there is no word of trouble.

3. "A dispute between the Ottawa Electric Railway Company and its street railway employees numbering four hundred twenty-five. The report in this case was received yesterday and was unanimous. The parties had not then formally accepted the recommendations, but the department understands that the company had accepted in advance, while the morning papers here announced that the employees last night decided to accept the finding.

4. "A dispute between the Inverness Railway and Coal Company at Inverness, N. S., about four hundred men being concerned. This Board is now in process of formation, a member having been appointed on the recommendation of each side, while the question of the chairmanship remains for a moment in abeyance.

"This, I think, completes the list of existing boards established since April 1, 1912."

Example for Our Country

Why should not our states profit by the experience of Canada? The prevention of such a large proportion as ninety-three out of one hundred ten strikes by a simple, sane, just method would mean much to us socially and economically. This is particularly true in our present troublous times, when men and women are rushing into strikes because they see no other way of rectifying their grievances. Are the officials of public utilities and mines in this country opposed to strike prevention? It cannot be. Are they not willing in time of threatened strike to have the actual working conditions of their plants brought to light by a fair investigation and then placed before the public for judgment? Every public utility or mine operator should be.

On the other hand, would our labour object to an impartial investigation of its grievances and a public statement of the same, to prevent the losses and risks of strikes? Some leaders of labour have frankly opposed legislation to this end in our states, giving two main reasons: (1) That labour is not willing to give up even for a day its fundamental right to strike. (2) That labour does not wish to give the companies time to prepare for a strike by engaging strike-breakers. On the first point, I do not understand how conservative leaders of labour can logically object to this phase of the Canadian act; for one of the aims of such men and the unions they represent is to make trade-agreements with employers; and every trade-agreement waives for a term this "fundamental" right to strike.

In connection with public service utilities where uninterrupted service is so essential for the public comfort, every man or woman seeking employment should recognize the duty assumed to serve steadily and to give ample opportunity for the investigation and rectification of any grievances that may arise. Aside from the

moral obligation of both company and men to give uninterrupted service, it should be remembered that the worst sufferers at a time of discontinuance of service in public utilities are the working people themselves. Is it not worth while under all circumstances to postpone a strike for a few weeks with the assurance, as under the Canadian act, that a fair opportunity will be given to have the objectionable conditions, which are the basis of the threatened strike, removed by peaceful means? I am assuming that the strike is a just one; if, however, a breach is threatened on account of a misunderstanding in which the labour side is wrong, how much more cause is there for delay!

Now to the second point, that of giving the companies time for preparation for the threatened strike. This argument overlooks the fact that workingmen do not, under the Canadian act, set a definite advance date for striking; they simply give notice of their intention to strike and ask for the appointment of a Board which is thereupon organized. If the company tried, as is suggested, to take advantage of the situation by collecting in advance an army of strike-breakers, the strike might easily be postponed until the company tired of supporting such an expensive body of idle men. Looking at this argument from another standpoint, public utility and mining companies are not likely to be so surprised by a strike that the modern strike-breaking agencies cannot supply men in time to meet requirements. The objections referred to are but theoretical. The hearty approval of the Lemieux Act from all sides after five years' practical operation, gives sufficient answer.

Under date March 14, 1912, Mr. J. G. O'Donoghue, B.C., LL.B., of Toronto, an attorney officially representing the unions of the Province of Ontario, writes to me confirming his previous strong endorsement of the act: "I have acted on thirty or thirty-five boards and have no reason to change my opinion." Mr. O'Donoghue has had more experience than any other man on these boards.

The Hon. W. L. Mackenzie King, C.M.G., Ph.D., the father of the act, who may well feel proud of his successful labours in saving for his country not only money but men by this movement for strike prevention, writes to me under date February 15, 1912, as follows: "My faith in the Canadian act has been increased, first, as a result of its workings, which have more than kept up to the average of

previous years; and secondly, because of the outspoken defense of the act by labour men. In our last election, an effort was made by some to belittle its effects, but the labour men came to its defense, in particular leaders of the Grand Trunk Railway strike."

In applying the principle of the Canadian act in our states, which I trust will soon be done, we might be able to improve details. For example, the Board may be increased from three to six members, for the following reasons: When a single individual represents a side, the pressure upon him to "stand up" for his folks, right or wrong, is tremendous. He is fearful of the charge that he has "gone back" on his side. He is more apt to be under suspicion of "selling out." His responsibility is unnecessarily great. Had each party, namely, the employers, the employees and the public, two representatives, these would strengthen and reinforce each other and divide the burdens. Again, the presence of a single judge, a "third man," gives the proceeding the appearance of an arbitration. With but three men on a board, as in Canada, all depends in the end upon a single man's judgment or viewpoint. In the amendment which I propose, that is to have a board of six, the judgment is more apt to be fearless and independent and the decisions will have a stronger moral influence upon both sides and upon the community. Other amendments of a technical character may be necessary to adapt the Canadian act to the provisions of our federal and state constitutions; but the principle of the act should soon be applied to satisfy our crying need of strike prevention. Although boards have but rarely been invoked by private business corporations or associations in Canada, it may be possible to so shape the law as to make it more attractive to private business in our states.

Industrial "Fire" Department

In view of the normal risk of fires and also the added danger of those of incendiary origin, every city, town and hamlet has for its protection, an organized fire department. A new development, called forth by growing appreciation of the need of conservation of our resources, is the fire-prevention bureau. In contrast to this activity, we are very backward in the industrial world in preparations for protection against the labour conflagrations which threaten our prosperity. In spite of the frequent occurrence of incendiary industrial fires in addition to those arising out of the conflicts of

normal human passions, we have hardly any industrial fire-prevention bureau, or even industrial fire department. Under our "Erdman" act (a crude forerunner of the Canadian act), Judge Knapp and Commissioner Neill have become federal industrial fire chiefs with practically no firemen at their command—two men for our whole country! Less than half our states have conciliation boards and even these are not at all equipped to meet the dangers that menace us.

Recommendation

One of our most serious problems grows out of the fact that the cost of living is increasing beyond the earning power of the masses. Manifestations of discontent are breaking out everywhere. Strikes are threatening right and left, while we remain almost entirely unprepared. There should be competent, disinterested men and women of standing in every community willing to devote their lives to the study of this serious human problem. To these experts employers and employees would turn with confidence to obtain a peaceful adjustment of differences, if such a simple mechanism as the Canadian act were operative in our states. Workingmen frequently strike because they know of no better way to attempt to secure justice. Let us provide such a better way!

Particularly in the case of employees in public utilities should the opportunity to obtain just conditions without resort to strikes be clearly established. All that both sides in any controversy should and usually do desire, is fair play; a device like the Lemieux Act assures this. In no strike does our public receive sufficient impartial testimony upon which to base judgment as to the rights of the controversy. At least, in cases where public utilities are affected the people are certainly entitled to full, unprejudiced information; the Lemieux Act provides for this.

It might be well, in view of the successful operations of our federal Erdman act in interstate railway industrial disputes, to apply a similar expedient to state public service utilities. This could readily be accomplished by delegating to the state public service commissioners the same powers now given, under the Erdman act, to the interstate commerce and federal labour commissioners. It would be a great step forward in the cause of strike prevention. But it has become evident that the Erdman act might

safely be broadened in its scope and strengthened in its powers to still further increase its usefulness. Conceding this, there is but a single step from a broadened Erdman act to the Canadian Industrial Disputes act. Why not make that step?

I earnestly call for action on the suggestion of President Taft, who says: "The magnitude and complexity of modern industrial disputes have put upon some of our statutes and our present mechanism for adjusting such differences, a strain they were never intended to bear and for which they are unsuited. What is urgently needed to-day is a re-examination of our laws bearing upon the relation of employer and employee and a careful and discriminating scrutiny of the various plans which are being tried by some of our states and in other countries."

The strike and the lock-out are crude, barbaric and wasteful; they prove nothing of value and settle nothing permanently; they show only which side is the stronger or has the greater power of resistance, not which side is right. After the conflict, angry passions rankle in the breasts of the defeated; the fire is but temporarily smothered. On the other hand, the settlement of differences in the enlightened manner proposed, impartial investigation and publicity through a fair tribunal, brings out the facts and establishes justice. This is the only true and final settlement of any difference between men.

May industrial peace with justice be thus brought about in a manner befitting our twentieth century civilization!

THE NATIONAL CIVIC FEDERATION AND INDUSTRIAL PEACE

By SETH LOW,
New York.

It lies upon the surface of the day's events that the problems of industry are among the most serious problems of our times. Broadly speaking, this is true of every country in the world. It is certainly true that the United States affords no exception to the rule. In our country these problems relate both to the regulation of industry as a commercial undertaking, and also to the adjustment, on a satisfactory basis, of the relations between employer and employee. This latter aspect of the question is found in every country in which modern industry exists; and it is to this aspect of the problem in particular that this article is addressed.

The discussion which is now taking place in almost every state of the Union, and in the national congress, in favor of the substitution of what is known as "Workmen's compensation," in case of injury to workmen incident to their employment, instead of allowing their claims for damage to rest upon the old theory of "the employer's liability," is at once both an illustration and a demonstration of the profound changes which, as a matter of fact, have entered into the relations between employer and employee during the last century. The law establishing the liability of an employer to a workman injured in his employ was slowly developed during several centuries. The theory of the law was that the employer was liable to his employee because of a wrong done him; and that if the employer was not at fault, in other words, if he were not responsible for the accident, the employee could not collect. When industry was on a small scale, and employers and employees often worked side by side, this law presumably did substantial justice; but it is almost universally recognized to-day that this is no longer the case. Therefore, almost by common consent as one might say, society is abandoning the old point of view, and is assuring workmen, injured in the course of their employment, a certain compensation, without regard to whether the injury was due to the carelessness of their employers or not. In other words, it is almost universally recog-

nized, under modern conditions, that industry must bear the burden of making proper provision for injured workmen, precisely as it bears the burden of insurance against fire. This movement began in Germany many years ago, under the leadership of Bismarck. It has been followed by one European nation after another; last of all by England. Now the movement is in full swing all over the United States, and it is likely to express itself upon the statute books of congress and of every state in the Union within the next few years.

The significance of this illustration, from the point of view of this paper, is that it demonstrates beyond the need of argument the profound change that has taken place in modern industry in the old relations between employer and employee. While the illustration confines the demonstration to one particular field, the same deep-going changes of relationship are working correspondingly great changes in other departments of the industrial domain. There has grown up very widely among employees the feeling that the men who put labor into a railroad system, or into any other vast industrial plant, help to create that system just as truly as the men who put their money into it; and out of this belief there has grown, and is growing, a constantly strengthening conviction that those who work for such an enterprise acquire a property right in it just as real as the property right of those who embark capital in it. The problem of modern industry, so far as it relates to the relation of the employer and the employee, seems to me to be to discover the just and equitable and practicable way of reconciling these two claims to property right in modern industry. As long as business enterprises were under individual management, it was not unnatural for a man, whose energy built up the enterprise and whose entire fortune had been at risk in developing it, to feel that it was his business. Neither was this claim seriously disputed by labor under old conditions. But the situation is evidently entirely changed when an enterprise is financed by tens of thousands of stockholders who give no time or thought whatever to its conduct; and when its affairs are administered not by the people who finance it, but by salaried officials. This at least is my own diagnosis of the industrial problem of our time.

As is the case in all transition periods, there are plenty of men who go to one extreme or the other. The typical employer of the

old school finds it impossible to realize that any change which has taken place in industrial organization has affected in the slightest degree the old time relationship as to this matter between employer and employee. To such men the business belongs, as a matter of fact and of course, to the men who put money into it; and the men who work for it are no more entitled to say anything about the business than under the old régime. On the other hand, the socialist party takes the opposite extreme with equal vehemence. The socialists claim that all industrial wealth is created by the men who labor; and that, therefore, all the instrumentalities of industry—the land, the factories, the machinery, and all the rest—should belong to the state. Thus, while one extreme eliminates labor from all control of the business, the other extreme seeks to eliminate capital from all control of the business. While both of these parties of extremists are striving to convince the world that their view is the only right view, and their attitude the only possible attitude, the average employer and the average workman are trying somehow to better conditions day by day, in the hope that some day the ideal relationship of every workingman to the enterprise to which he gives his time and labor, which are his life, will yet be developed. The problem in this aspect is more a practical problem than a problem of theory. Multitudes of employers would like to interest their employees in the business in the same whole-hearted way in which they are themselves interested in it; but it must be said that, up to the present time, no method of doing this, of universal application, has been discovered. What we see, therefore, all over the world, is the division of employers and of employees into two camps; the employees uniting to secure for themselves better and better terms, and the employers uniting to present a common front against the demands of their united employees. It will probably not be disputed by anyone that, as a result of this attitude on the part of employees, multitudes of workmen have secured shorter hours of labor, higher wages, and better physical conditions under which to work. Some day it may well be hoped that out of this study *en masse* of the relations between employers and employees, much that is still a matter of conflict between the two parties will be settled by mutual agreement, as, indeed, much has already been settled.

In this movement to discover terms mutually acceptable to

employers and employees in various industries, no practical method has been developed more promising than the "trade agreement." By a "trade agreement," I mean an agreement entered into by the representatives of the employers in a given trade with the representatives of the employees in the same trade, by which agreement the hours of labor, the rates of pay, and all the various other elements that enter into the relationships between employer and employee are agreed upon for a fixed period of time. Possibly no trade agreement upon the same scale and of such long duration can be cited as that between the American Newspaper Publishers' Association and the International Typographical Union of the United States and Canada. These two associations, after years of conflict, in the year 1900 formulated an agreement which was to last for one year, and which provided for the arbitration of disputes. This agreement has been modified and renewed from time to time, as experience has indicated. It has just been renewed for a third five-year period, and it forms to-day the basis upon which the newspapers of the United States appear, morning after morning, without interference from strikes. This new agreement was executed in January of the present year, to go into operation at the expiration of the previous agreement, on the 30th of April of this year. In other words the experience of the last five-year period was embodied in a new agreement, well ahead of the expiration of the old one; so that the industry has remained under control, as stipulated in the agreements, without any interruption. The agreement provides for the arbitration of all questions relating to wages and hours, working conditions, and disputes arising under contracts. It also provides for local boards of arbitration, with an appeal to a national board of arbitration. The membership of the local boards is placed at five, consisting of two representatives of the local union, two representatives of the publishers' association, and, in case they are unable to agree, another to be selected by the president of the International Typographical Union and the chairman of the special committee of the American Newspaper Publishers' Association. As thus constituted, the full board hears the case. At the conclusion of its presentation, the four original members go into executive session, and endeavor to reach an agreement. In case they fail, the chairman casts the deciding vote. An appeal lies to the national board of arbitration which is equally divided in numbers. This equal

division of the national arbitration board, while not without some embarrassments, is believed by the trade to give better results, on the whole, than a decision by an odd arbitrator who, from the nature of the case, can be only imperfectly informed on many of the questions to be decided.

Trade agreements exist between nearly all of the railway systems and the million or more members of the railway brotherhoods; between the anthracite and bituminous coal operators and the half million members of the United Mine Workers' Organization; between the thirty-five different employers' associations in the building trades and the several hundred thousand members of the various unions involved; between many of the large street railway systems and the members of the Amalgamated Association of Street Railway Employees; between the boot and shoe manufacturers, the hat manufacturers, the stove manufacturers, and the unions working in those trades. In the year 1908 there were trade agreements in as many as nineteen other trades. In all probability these statistics are incomplete; yet, as far as they go, they illustrate what a powerful factor the trade agreement has already become in the maintenance of industrial peace. By these agreements industrial strife is practically eliminated for long periods from the domain which they affect. Naturally, such agreements are possible only between employers and organized trades. The employers who decline to enter into such agreements sometimes justify themselves in declining, because, as they say, they wish to protect the labor which is not organized in its right to employment. If such employers would employ only unorganized labor, and make no effort to use, at the same time, organized labor, the problem would be greatly simplified; but, when they attempt to prevent their employees from organizing, or when they attempt to employ organized and unorganized labor side by side as if both were unorganized, they subject themselves to the suspicion that they are not so much concerned to protect the freedom of labor as they are to avoid dealing with labor when labor, like themselves, is organized and strong. In the industrial world to-day unorganized labor is just about as helpless as unincorporated capital. There are many abuses incident to organized capital; but for all that men do not propose to go back to doing business on an individual basis. There are evidently, and admittedly, very serious criticisms to be made of many of the methods and atti-

tudes of organized labor; but for all that it is probable that the industry of the future will have to deal with labor that is more and more completely organized. From which I conclude that the trade agreement is a useful and desirable agency for enlarging the boundaries of industrial peace.

When this question is considered in its national aspect, there are three factors affecting it in the United States which are particularly friendly to a sensible solution of one detail of the problem after another. In Great Britain the organized labor movement has become largely socialistic, and it is a fundamental basis of the socialistic conception that the employing class and the class of the employed have no interest in common. The socialists' appeal to workingmen is made frankly upon a class basis. In England, when such an appeal is made, it gets a ready response, because English society has been organized upon a class basis from time immemorial. Therefore, when appeal is made to labor as a class, in England, the labor class listens and responds. In the United States there is not, and there never has been, any such class organization of society. It is a part of our fortunate inheritance that this is so. Consequently, when an appeal is made to labor on a class basis, in the United States, such an appeal is quite as likely to offend as not; because laboring men in the United States feel themselves to be fellow citizens with all the rest of the population, and they do not recognize any classes as being either above them or below them. So far, at any rate, American institutions have been able quickly to imbue newcomers from Europe, who have grown up under class systems, with the American point of view and the American spirit.

Still another factor making powerfully for a happy solution of industrial problems in the United States, is the fact that the American Federation of Labor, and the great Railroad Brotherhoods are, in the main, non-socialistic. The typical socialists, as represented by the socialist party, assume that labor and capital have nothing in common. The organized labor movement in the United States, on the contrary, while it urges the demands of labor, equally recognizes the rights of capital. The attitude of organized labor in all the railroad brotherhoods and in a vast majority of the trade unions of the United States is, that the interests of capital and labor are not identical; but that they are usually, and perhaps always, reconcilable. The trade agreement, which is practically universal in the

railroad world, and which is extending rapidly in the industrial world, is the natural outcome of this attitude on the part of organized labor in the United States.

A further outcome of this attitude on the part of organized labor in the United States is The National Civic Federation—an organization which has no parallel in any other country in the world. Its governing body is made up in equal numbers of employers, of the representatives of organized labor, and of men fairly representative of the general public. The National Civic Federation thus affords a platform upon which all elements can meet and become acquainted with one another's point of view. It further affords an agency through which parties drifting towards a dispute may be brought into helpful contact with each other. The writer has served as the chairman of the conciliation committee of The National Civic Federation for many years, and he believes it to be literally true that, in every instance where the participants have been willing to come together in advance of a break, a settlement of the dispute has uniformly taken place. This is only one aspect of the activities of The National Civic Federation. Through special departments it is constantly engaged in welfare work, the object of which is to secure better working and living conditions for men and women employed in all industries and occupations of the country. It would be highly illuminating if it were possible to make clear to the public the number of establishments in which, by processes such as this, the physical conditions surrounding work-people have been, and are being, modernized. This work is constantly going on, and the effect of it is being felt more and more broadly. Another department has been taking the initiative in framing model legislation for changing employers' liability laws to laws providing for workmen's compensation. The Federation is now engaged, also, in a comprehensive study of the useful limits of public control of interstate and municipal corporations. Evidently an association, made up as The National Civic Federation is made up, can accomplish nothing when the views of its members do not coincide; but whenever all of the elements represented in the Federation are of one mind, it is equally clear that its influence is great and far-reaching. It is not too much to say that of all the agencies in the United States making for industrial peace, none has more capacity to be useful than The National Civic Federation.

It is, of course, only one of many agencies working to the same end; but it has a unique opportunity to be useful that is born of its mutual relationship to all parties to the industrial problem; that is to say, to the employer, to the employee, and to the general public. Naturally The National Civic Federation is attacked by the extremists at both ends of the line; but it is steadily demonstrating its value as an agency for the promotion of industrial peace and progress. Some strikes certainly take place in the United States, and occasionally they are serious; but they are few, indeed, in number to what they would be if no such agency existed as The National Civic Federation, with its ability to bring together both parties to a conflict before the break comes.

CONDITIONS FUNDAMENTAL TO INDUSTRIAL PEACE

BY GEORGE B. HUGO,

President, Employers' Association of Massachusetts, Boston.

With the "get-all-you-can-any-way-you-can spirit" pervading industry and the desire to get the best of the bargain when differences arise between capital and labor, the outlook for industrial peace is not encouraging. With this spirit predominating, ethics, justice, and common honesty receive but scant consideration. Especially is this true when labor is organized and capital is corporate or combined.

Corporate management and organized leadership, influenced by the collective mind which they serve, make it, if not necessary, at least most expedient not to be over-scrupulous in dealing with each other. The demands of the bond and stockholders who look to the management of corporations for material returns and the equal demands of the rank and file of organized labor who also look to their leaders for substantial results, make the means adopted—however questionable—justify the end sought. Both relieve themselves of all moral responsibility for the acts of the agents of their particular group, and both accept the benefits secured without scruple or examination into the methods employed to obtain them. The underlying cause of the conflict in industry may be traced directly to this substitution of corporate for individual ownership of industries and to the substitution of organized labor for individual labor. Group responsibility has taken the place of individual responsibility.

As a result, the individual conscience has become dissipated in the collective stream of irresponsibility. With the loss of its economic identity, it has lost also its moral resistance to the popular but insidious philosophy of the right of group might over individual right. Fortified with this false and unethical philosophy, corporate capital and organized labor must necessarily keep up a bitter and relentless struggle for supremacy, each to retain its position, even at the sacrifice of every consideration of equity. The mutual distrust engendered by this attitude of mind leaves any possibility of an equitable adjustment of differences on peaceful lines out of the question. Both sides,

conscious of their power, will continue the struggle until one of the parties to the conflict is completely overcome and the other is in full control of industry. The only possible relief lies in the hope of a greater compelling force arising to overpower both combatants now battling for industrial control. There is no indication, however, of the realization of this hope.

Government, to which we should look to take the initiative in protecting the individual from group assaults, is honeycombed with the group spirit. It has abdicated its function and left the unorganized, unassociated, uncombined individual to shift for himself. One must be tagged, labeled, or carry the insignia of collectivism in some form to receive any protection from officialdom. Officialdom, whether appointed or elected, is influenced in its decisions not by the right or wrong or the merits of any question that arises, but by the effect its action may have upon the position it holds. If the public good suffer by wrongs committed against the individual it is of little consequence, providing it brings the reward of continued political service from the debased group selfishness which it serves, be it corporate capital or organized labor. There are few exceptions to this rule in state or nation.

The race of subservient officialdom for group favor and its utter disregard of individual and community rights is well illustrated by the Boston Elevated Railway Company strike of recent date. The main issue involved in this strike was the recognition of a newly-formed union whose membership comprised less than half the employees of the railway. The great majority of employees, satisfied with conditions, refused to strike and remained loyal to the company. The public announcement advertised in the newspapers and signed by the president of the Boston Elevated Railway Company, that "The management intends to support its loyal employees in their avowed determination that no outside individual or organization shall come between themselves and the officers of the company," gave every assurance of protection to the loyal employees from any outside group interference.

The usual tactics of organized labor were employed to terrorize the community. Cars were overturned and carloads of passengers stoned, tracks were dynamited and many passengers and employees seriously injured, some fatally. Arrests of striking carmen in great numbers followed. The courts, presided over by judges appointed

for life in Massachusetts and thus free from the baneful influence of group coercion and intimidation, did their full duty to the community. Severe but just sentences were meted out, which had the effect of checking the more turbulent among the strikers.

During this period the loyal employees stuck to their posts and operated the cars, facing danger and bearing the physical brunt of the contest with courage and fortitude, qualities of the best citizenship. They were rendering a public service and appreciated their responsibility to the community. They assisted the company to secure a full complement of men, and cars were soon running on a normal schedule. There was every physical indication that the strike was a closed incident when, like a bolt from a clear sky, the public conscience was shocked by the news that the elevated railway officials had come to an agreement with the strikers, in which they surrendered every point at issue. The union was recognized, the strikers reinstated in their old positions at former ratings, thus displacing the loyal carmen automatically advanced during the strike. Loyalty and fidelity were penalized, disloyalty and brutality rewarded. What malign influence had brought about this treachery on the part of the railway officials? The threat by organized labor of political extermination of the governing authorities of both state and city if they did not force the railway company to yield to labor's demands.

A most disgraceful scramble of officialdom followed, to serve what appeared to be the stronger of the two group interests involved in the strike. The governor of the state (seeking re-election) arbitrarily said to the company: "The men are right. You must give way!" The mayor of the city, with a United States senatorship in view, followed suit, and the district attorney, also a candidate for gubernatorial honors, disgraced his profession by upholding the strikers convicted in the lower courts, stating that they had been unjustly sentenced and that he stood "between the people and such lower courts as seem to have lost all reason." The Board of Arbitration and Conciliation, not to be outdone by the political fireworks of the governor, mayor, and district attorney, gave extensive hearings, finally reporting that the company was responsible for the strike.

To show the effect of group terrorism over officialdom, the salient points of this report are illuminating. The board said:

Upon the evidence presented, the board finds that the men were justified in the belief that many had been discharged because of their membership in the

union, or their activity in its formation, and that the company was responsible therefor.

It appears by the evidence that many of the company's cars are being operated by men whose conduct does not merit the approval of the traveling public; that there has been neglect, discourtesy and insolence on the part of some of the employees; that conductors have been seen to collect fares without recording them by the device furnished for that purpose. This latter abuse of the public and the company has a decided tendency to weaken the high standard of honesty, which is so essential to our social and industrial structure.

The existing controversy seriously affects the public interest, and the board recommends to the parties that in conference they endeavor by agreement to accomplish an amicable settlement which shall be alike just to the company and its employees and the public which it is its duty to serve.

Counsel for the company submitted a statement at the conclusion of the hearing on July 16, which purported to prove that more men were employed by the company than were in its employ on June 6, and that the car service was being maintained in its former normal condition. Therefore, counsel contended, no strike exists at the present time.

The board does not hold this view. A strike exists so long as those who strike maintain an organization, or by concerted action continue in the endeavor to secure the object which they seek to attain.

In this report, so hypocritically solicitous for the public welfare, the company is censured for technically violating the law, but such minor offenses as dynamiting tracks, overturning cars, injuring passengers, and the general destruction of property by strikers in uniform, received no mention. The board was evidently blind and deaf when evidence of violence was submitted, which may account for its being dumb about it in its report. And yet, after receiving such unfair and unjust treatment, the company relieved itself in true corporate fashion, of all responsibility by agreeing to leave the terms of settlement and the fate of its loyal employees in the hands of this tribunal which, by implication, had already prejudged the case. By this humiliating and dishonorable surrender it cowardly deserted its loyal workers to whom it had promised support and protection against any individual or organization that might come between them. It sacrificed every fundamental principle of right and justice. The price of peace was perfidy. It was paid!

With the strike won and the company financially solvent, why did it accept the heavy exaction of moral bankruptcy? The inference is that it felt unable to cope with a hostile government, lawless unionism, and a prejudiced state Board of Conciliation and Arbitration.

But can cowardice be offered as an apology for the base betrayal of principle? If our moral structure is to be based on the policy of following the lines of least resistance, we as a nation are doomed to destruction.

The termination of this strike established three things: First, that group violence and lawlessness are now recognized as legitimate and effective weapons in industrial disputes; second, that a politically created state Board of Conciliation and Arbitration cannot, by the very nature of its being, render just and impartial decisions in labor disputes; third, that government under our present system cannot be relied upon as a compelling force to insure justice and protect the individual and the law-abiding community when corporate capital and organized labor are at war. In addition, it proved beyond doubt the demoralizing effect of the group spirit on the individual. With the exception of the loyal employees every group involved—corporate capital, organized labor, the Board of Conciliation and Arbitration, and governing officialdom were blameworthy. Still, probably no individual held himself responsible for this foul action, but shunted the odium upon those he represented or served.

The establishment of this new order of things destroys all hope of relieving the industrial situation through the ordinarily accepted peaceful means. Conciliation and arbitration, whether state created or mutually agreed upon by the disputants, has proved to be a failure and utterly worthless as a means of bringing about lasting peace. At its best it is only a miserable makeshift, a worn out expedient invented to postpone the evil day through compromise. Its acceptance by either party to a dispute is either an acknowledgment of weakness or doubt of the justice of the position taken. Power seldom makes any concession and justice does not permit of compromise when a question of right principle is involved. A principle is either right or wrong. It cannot be compromised. It has been well said, "Every time you make a compromise, the devil gets the best of it." One terrible experience in our national life drove home the truth of this trite saying. We compromised on the slavery question. The devil had the best of it for over fifty years, but we finally settled it and settled it right, though at a tremendous cost of life and treasure. Had the founders of our nation refused to sanction this one great compromise between the slave and free states, is there any doubt that we should have been spared the horrors of our civil war?

The industrial question is analogous. We failed to profit by the bitter experience of compromising the slavery question. Had we refused capital the privilege of combining and equally refused to concede to labor the right to organize, without holding each individual composing such combination or organization responsible for its collective acts, we should have been spared the discord and strife in the industrial world. By compromising the great moral principle of equal responsibility before the law, we indirectly but none the less effectively gave a severe blow to the supreme principle upon which our liberty and the foundation of our institutions rest, namely, equality of opportunity and individual freedom.

By the adoption of this double standard to govern industry, one standard for the individual and another for the corporation or organization, we also divided the community into two classes, naturally antagonistic to each other: those whose welfare depended upon the success of the group with which they were affiliated and those whose welfare depended upon their own initiative. Thus divided, equality of opportunity ceased for the individual and only remained for the larger corporate or associated group units.

The menace of this division was not fully recognized until corporate capital began gradually but steadily to absorb industry. The individual manufacturer or merchant, no longer able to compete in this unequal contest, soon found himself compelled to succumb to this overwhelming force. If left in the industrial field it was only by sufferance. This condition, however, was accepted as being in the interest of public good. The economy of production through combination was elaborated upon as a compensating feature for the elimination of the individual as a factor in industry. What if the individual did suffer unjustly? Did not the larger output and the minimum of waste through duplication of plants mean cheaper commodities for the public? Should not the individual make this sacrifice?

So long as only the comparatively few were affected by the ruthless oppression of corporate capital, this self-sacrificing reasoning, when applied to the other fellow, was cheerfully accepted and little thought given to the principle involved. But when the flim-flam game of temporary reduction of the prices of commodities was exposed by the excessive monopoly prices which followed after the industrial field had been cleared of individual competitors, the same self-sacri-

ficing reasoning did not apply. It looked different when compelled to submit to any exaction that corporate capital might impose.

The awakening came too late. Corporate capital was now firmly intrenched and rooted, both industrially and politically. Anticipating the clamor of its deluded victims and the demand they would make of government for protection, it was forehanded enough to get control of government officialdom as well as industry, thus closing the only avenue of escape from which relief might come. Not until then did we realize the helplessness of our position and the folly of stripping ourselves of the safeguard of competition in industry.

Coincident with the powerful growth of corporate capital, there came into being another group, promising at its inception but afterward proving equally menacing to the principle of equality of opportunity and individual freedom. Organized labor began to flourish. It must be conceded that as an antidote to corporate capital, it was justified in combining for self-protection against the common enemy. There was merit in the argument that if the individual manufacturer or merchant with capital to invest, was unable to hold his own in industry, the individual workman would have no chance at all with only his labor to offer against combined capital. The take-it-or-leave-it policy of monopoly-controlled industry in the purchase and sale of commodities applied with equal force to the purchase of labor. With the opportunity to sell its labor restricted to a narrowed field in control of corporate capital, it too must submit to the inevitable and take what was offered or find another means of enforcing just compensation. Between the alternative of complete submission or combining to protect itself it chose the latter.

Up to this point there was common agreement as to the justice and expediency of a defense movement to check monopolistic aggression. Supported by the great majority outside of its immediate ranks, organized labor succeeded in getting a permanent foothold. So long as organized labor remained on the defensive it fulfilled its true function of protecting its own rights and those of the community. It justified its existence. But when it encroached upon the rights of others its usefulness ceased. No matter how laudable its original object may have been, once established and grown to power it equally sought complete control of the industrial field. It not only attacked corporate capital but every individual whether employer or employee who refused to do its bidding. By its policy of the closed shop,

restriction of the use of tools and machinery, restriction of output and restriction of apprentices, thus denying the American boy the opportunity to learn a trade except in prison, and the many other well-known but absurd restrictions with which unionism is fettered, it ignored the principles of equality of opportunity and individual freedom.

While corporate capital controlled the price of commodities it did not force one to buy them. The privilege of becoming vegetarians still remained if beef trust exactions went beyond the length of our purse. Organized labor, on the other hand, controlled men. It said in substance to employers: "You must pay our price for the labor of each man regardless of efficiency or worth, and if you refuse no other man will be permitted to take the job!" To the workman it said: "You must pay tribute to the union and obey the union laws or you can not work at all!" In other words, it denied not only the right of equality of opportunity but went further and said, "You shall have no opportunity!"

In a word, there is no choice for the individual between the two evils, corporate capital and organized labor. He must submit to either one of the two groups or to both. The rules of the game of both groups are governed by the same principles. There is no essential difference between them. Both are selfish. Both are bound together by the common bond of group interest and both deny that the individual has any rights that deserve to be respected. We have nothing to gain from the success of either group. Their interests are identical, their purpose the same. The best evidence of their unanimity of purpose is the united opposition of both forces to the Sherman anti-trust law, designed to protect the individual from group encroachment.

Let us no longer be deceived by the altruistic claims of combined capital with its much advertised palliatives of welfare work and profit-sharing schemes, mere bids for immunity from censure. Neither should we be deceived by the humanitarian claims of organized labor. The bettering of the condition of the worker is a mere incident in the scheme of advancement to greater power, designed to hoodwink the credulous but misguided sympathisers with unionism. Furthermore, let us no longer be deceived by the intermittent skirmishes between these two selfish groups, which always terminate in a division of the swag extorted from the community as its share of the price of peace.

Permanent peace established on this basis is more to be feared than present day strife. It would perpetuate the burden without hope of ever being relieved. In the confusion of discussion and the turmoil of warfare between corporate capital and organized labor, the real issue upon which industrial peace depends has been lost sight of. It is not economy of production, increase of wages, shorter hours or bettering of general conditions, but whether individual freedom shall succumb to collective slavery. Whether this nation shall remain free for every individual to make the best of himself or herself without interference from any group, be it capital or labor, this is the real issue. It must be settled, and settled right, before lasting industrial peace can be established.

To carry the analogy of the slavery question still further: When the immortal Lincoln said in substance, that a perfect union and a lasting peace could only be secured by making every state a slave state or every state free, that harmony under other conditions was impossible, it awoke a storm of protest. It was the expression of a new thought and it set statesmen thinking in every corner of the republic. We know to-day that utterance was truth. It is equally true to-day that lasting peace in industry cannot be secured until each individual is economically free or collectively enslaved. Harmony under other conditions is impossible.

This conclusion raises the question whether resort to force is the only course open to determine whether individual economic freedom or collective slavery shall prevail. Every indication points to an affirmative answer. Have not all the peaceful means of arbitration, conciliation, mediation, and compromise signally failed? Have they not served to aggravate instead of relieving the tense feeling of unrest and discontent in the industrial field? Does anyone believe that the privileges so lightly granted will be surrendered by either group without a struggle? Has not organized labor already demonstrated the efficacy of violence as a means of increasing its power? Will not the individual, abandoned by government, exploited by corporate capital, and oppressed by organized labor, in final desperation make an effort to free himself?

When the peaceful ballot fails, the hostile bullet follows. The clash is inevitable. There will be a new alignment of forces. It will not be between capital and labor as such, but between the champions of a strong individualism and the weakened serfs of

collectivism. There is no doubt as to the result. Individualism will triumph and collectivism will go down in defeat. The moral cholera of our industrial life will disappear. True values of commodities and labor will be fixed by the natural gauge of worth and efficiency, and not by monopolistic fiat or organized labor decree. Government will again assume its abdicated function of protecting the individual and equality of opportunity and individual freedom will once more become a virile, living force. Then, and not until then, will permanent industrial peace be established.

A NEW INDUSTRIAL DEMOCRACY

BY EDWARD EWING PRATT, PH.D.,
Lecturer on Economics, New York University.

There is a growing feeling among employers that working conditions in their stores and industrial undertakings must be improved. There are some who have for many years, at least, cared scrupulously for the well-being of their workers. But only within the last two or three years has this movement on the part of employers reached any considerable proportions. On the part of many it is doubtless the expression of fear—fear of public opinion, fear of organized labor, fear of legislation. On the part of most, however, it is doubtless the *bona fide* expression of interest in the well-being of their workers and a genuine desire to improve conditions.

We have, it is true, legislation enforcing certain minimum conditions of work and labor, but legislation is after all conditioned by that unsocial barrier, practicability. The law is not what it should be, is not what the experts know is best; it is a compromise between what is best and what inferior employers desire. It is a compromise effected by an untechnical and oftentimes insincere body of law makers. Legislation, therefore, has one and only one function in improving working conditions, namely, to bring recalcitrant employers up to a minimum level set by law.

There must always be employers who will go beyond this; employers, who in their own plants enforce conditions far superior to those set by law. There must be employers who will go forward and blaze out the trails of progress; trails which later the cumbersome wheels of legislation will follow. Such an employer was Robert Owen. In his mills at New Lanark, Scotland, Owen showed that it is not necessary to build up any business upon the lives and health of little children. He showed that a village can at the same time be a mill community and a desirable place to live in. He demonstrated the practicability of the labor laws, which have been enacted in England, almost up to the present time. Similarly, employers in this country are gradually testing out improvements

and practical plans for improvement in advance of current labor legislation. Upon these experiments our further advance depends.

Employers are gradually beginning to realize that they have grave responsibilities; that they hold in the hollows of their hands the well-being and happiness of the men and women who are dependent upon them for their daily bread. Employers are beginning to realize that they have at their disposition by far the largest part of the waking time of their employees. These facts have led employers to investigate the conditions in their plants and to take definite and consistent steps for their improvement. There has been a considerable movement on the part of employers in this direction, a movement which is gaining rapid headway and bids fair to outstrip the accomplishments of merely interested outsiders.

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This movement among employers has taken, in the main, three directions: first, the betterment of physical conditions and the physical environment of the workers; second, the improvement of the wage system through more equitable methods of compensation; third, the increase of the efficiency of the workers.

Either of two motives may actuate the employer who betteres the physical environment of his workers: the betterment of the health of the workers for their own sake, or the recognition of the fact that a healthy working force is more efficient than a sickly one. How often employers are heard raising the plaintive cry that labor is inefficient and that good workmen are not to be found! And how seldom does the employer ask himself, "Is my plant one that is calculated to attract labor of the better sort? Is my plant any better, from the workman's point of view, than my neighbor's?" How can any employer expect to have good labor if the working conditions which he offers are inferior to, or even no better than, those of his competitors in the labor market? Some employers improve conditions on this account; their interest is a purely economic one. A few high-minded employers with some breadth of interest and sympathy, who have the real interests of their employees at heart, are improving conditions because they believe that their employees, as men and women, are entitled to decent and healthful working conditions.

Other employers are dissatisfied with the present systems of

wage payment, which either on the one hand do not reward men accurately for the work they do, or, on the other hand, drive them at an ungoverned pace. Time or day's work, piece work, parts work, are alike unsatisfactory. Time work puts the employer at a disadvantage and tends to reduce the workers to a dead level. Piece or parts work reduces all effort on the part of the workers, to a straining race against time, strength and health. Many methods of wage payment have been devised: profit sharing, with almost infinite variations, premium and bonus systems, which endeavor to reward the skilled and conscientious laborer on his merits, and others of lesser importance. In spite of the failure to find a generally satisfactory system, the effort has borne considerable fruit in showing the complexity of the problem and the desire of employers to effect a satisfactory solution.

The third phase of this growing movement among employers for the improvement of industrial conditions has been a well-considered attempt to improve the working efficiency of the labor forces. This is not exactly what is meant by scientific management, unless we can call it "scientific management of men." Here, again, some employers recognize the economic elements involved, and have in mind only the better utilization of plant and machinery and the increased product. Some employers, again, are really interested in their men and wish to have them improve themselves for their own sake and not because they will become better cogs in a big machine.

The best work to-day along lines of industrial education is being done either by employers of labor, as in the case of the big apprentice schools in some of our big factories, or with the active cooperation of employers, as at Cincinnati and at Fitchburg, Mass.

These last two are real experiments in industrial democracy. The different grades of students attend school either in the continuation schools, the cooperative high school or the cooperative engineering course at the University of Cincinnati.¹ At the same time they are working in the factories of Cincinnati. It might be thought that the young university students working at the wage rates of apprentices would arouse the opposition of the trades unions. One incident will show how this works itself out. A labor union was holding a meeting one evening, preparatory to calling a strike. In the midst of the meeting, some one arose and protested against

¹ See page 126.

"those young college fellows coming down here and working below the union scale, and taking the food out of our mouths." The man had no sooner indicated what he had to say than men from all parts of the room were clamoring to be recognized. One man succeeded and spoke thus in words fraught with social meaning: "Men, I have a son. This is the first chance he ever had to make something out of himself, and, by God, the man who tries to take it away from him, walks over my dead body." No one has ever raised the question again, and during the strike that followed, the students were the only workers, and they passed in and out the lines of pickets unmolested.

Another kind of effort to promote efficiency is the study of motions or what might be called the new "science of work." This study of motions aims to accomplish the result in the shortest possible time, not by speeding up nor by driving, but by eliminating all unnecessary parts of the process and using only the fewest necessary movements.

These efforts to promote efficiency aim to make better and more efficient workmen; if they succeed in this, their success in improving conditions follows as a consequence. Let us turn now from what the employer has done or is trying to do to consider for a moment modern industrial organization from a historical point of view.

B.

It is unnecessary here to recount the often-repeated history of the industrial revolution and of the development of the factory system. There are, however, some consequences of the latter that seem to have been neglected. The introduction of the factory system into the field of production doubtless wrought great economies, but the process is by no means finished and will not be for some time to come. In fact, our whole industrial system is still in a state of transition. Waste and slovenly management of materials and resources are apparent everywhere. Scientific management, if it has done nothing more, has served to emphasize the wastes of our present system.

Two very important elements of efficiency were lost in the change from the handicraft or domestic system of production to the factory and large scale system. These elements of efficiency were: first, the carefully educated and trained workman; and

second, the close personal relation between employer and employee. Under the old system, the youth entered the employ of the master and learned the entire trade from beginning to end. When finished, he became a journeyman and went forth to learn what others could teach him. He then became himself a master, skilled in every branch of his trade. To-day, a careful and competent workman is almost a thing of the past, while the master workman is not a product which is being cultivated in the United States.

The second element of efficiency which was lost in the development of the factory system was, if possible, even more important. "In Ye Olden Days" the master with all his workmen sat about a single table, his wife on his left hand, then his children, and then his journeymen, one by one, beginning with the eldest, and ending at his right hand with the newest and often the youngest apprentice. To-day, the average employer, in a large shop or factory, does not know his employees either by name or by face. He has no personal dealings with them whatever, and the sympathy and understanding between them, as man and man, have passed away entirely. The same thing takes place when the small factory develops into a big factory, when the small employer grows beyond the point when he knows his workmen by their given names. When he is no longer able to go into the shop and to recognize his men individually, mutual sympathy between employer and employee ceases to exist and one great element of efficiency is lost.

This gap between employer and employee has been greatly widened by the growing unfriendliness of trades unions and labor organizations, and by the socialistic propaganda of class consciousness. We have reached a state to-day, in the relations of employee and employer, where simple friendliness is well nigh impossible.

Determined efforts are being made among employers who recognize the real difficulties to replace these two elements of efficiency. The movement for trade and industrial training which has already been mentioned aims to replace the careful, all-round trades training which was formerly given by the master. Employers are also endeavoring to replace the close personal relations which were lost in the development of the factory system and in the development of large labor forces. They are attempting to do this by putting into their system of management a person who performs all their personal and social functions for them and who represents them

in the purely personal relations which should exist between employer and employee. This person is sometimes called a social secretary, a welfare secretary, a service secretary, sometimes only a counsellor, a nurse, a teacher, or sometimes by no particular title.

The essential point is that two distinct elements of efficiency have been lost in the development of large industries. The attempt to restore them is not charity, it is not philanthropy, it need not be social justice; it is good management, it is good business.

C.

Let us look at this industrial democracy from another point of view. The most distinguished and most significant development in modern political history has been the growth of the spirit of democracy. Our own country was a pioneer. Other countries, one by one, have followed our example until even benighted China has fallen into line. The growth of democracy has everywhere seen the putting away of monarchies or the serious limitation of their prerogatives, the breaking down of arbitrary power and the substitution of liberty of thought, a certain freedom of action and the right to self-government. But the growth of democracy has been largely confined to politics and political privileges. Slowly, very slowly, if we compare progress there with the swift, brilliant storming of the strongholds of political privilege, has the idea of democracy taken root and grown in the industrial world.

The evidences of the growth of democracy in the field of industry are many. Perhaps the strongest and most important is the development of the organization of labor. Nowhere has the spirit of democracy been so crude, because it has mistaken the idea of equality for that of democracy. It has urged equality, but only within a single trade. At present there is another great movement, more democratic than the old, which sets up no trade or craft as the basis of an aristocracy of labor but which tries to unite all workers in a general cause of class progress. On the other hand, there are here and there springing up little industrial republics in the shape of producing and distributing cooperative societies. Here we find the workers themselves not only striving to take part in the management of industry, but actually forming among themselves independent self-governing industrial units.

Nothing can be clearer than the real objective of present day

trade unionism. This objective, however, is often not expressed, nor even conscious, but it is an objective toward which in fact the labor movement is groping and toward which real progress is being made. This is no less than the democratization of industry. It is the tangible and later expression in the industrial world of the spirit of democracy which found earlier expression in the revolt against political despotism. For proof of this one has to look only at the history of recent labor conflicts in this country. The shirt-waist strike, the cloak-makers' strike, the furriers' strike, all in New York; the tailors' strike in Chicago, and the strike at Lawrence, Mass., are typical in this respect. All disclosed new motives, hitherto hidden or unimportant. What was the main issue in each of these labor conflicts? Was it wages? Was it hours of labor? Was it conditions in the workshop? Was it any of the issues which have been fought over and over, and when won only set the standard a little higher, to be raised again in a few months or a year? The real issue is no longer any of these. It is that of the "closed shop," and this is simply another way of raising the question whether or not the working man shall have a voice in the management of the industrial state of which he is a member. An employer may pay high wages, he may give short hours of labor, he may provide the best working conditions possible. He may still have labor difficulties, and may wonder why his men are dissatisfied and why they insist on making larger and larger demands. He will continue to wonder until he sees that the essential thing is not conditions or wages or hours, but democracy, and that until the men have some share in the management of the plant continued difficulties will result.

Such an outcome is inevitable. We educate our youth at much trouble and expense to an understanding of democratic privileges and duties. We impress upon our immigrant population the fact that under a democracy they have certain privileges and duties. But those privileges and duties are only occasionally exercised; during most of the three hundred and sixty-five days of the year, as workers in stores and factories, they are under a control that leaves little real democratic freedom in their every-day lives.

Political rights are relatively remote, industrial rights are immediate and full of significance. Political rights are personally unimportant, industrial rights are the bread and butter in every man's family.

The rise of socialism can be explained on no other ground than this: it is the expression in tangible form of a desire on the part of men to have industrial democracy. Socialism is not a political scheme; it is primarily industrial and in a less degree social. Socialism seeks industrial equality, but which it mistakenly regards as synonymous with equality of opportunity in industry. The real meaning of industrial democracy is an equality of opportunity in industry, a thing which cannot be realized until industrial despotism is replaced by a representative form of management in industry.

D.

Let us view the whole problem from another angle, that of the employer:

In every line of industry where there are any considerable number of men employed, there are certain things which employers specially desire and which they hold to be indispensable to success. There is one thing, however, which is always paramount. Good light, access to a convenient market, a plentiful supply of cheap power, up-to-date machinery, and many other business necessities are valuable. But no one of these is the most essential thing. The one thing that is most important is labor.

There are in fact two things above all others that employers desire:

1. Efficiency in the workers as individuals.
2. Efficiency in the labor force as a whole.

Andrew Carnegie once said: "Take away my mines, sink my ships, confiscate my railroads, burn my mills, scrap my machinery, but leave me one thing—my organization, and I will rebuild my business within five years as great as before." Mr. Carnegie is paying tribute here to the thing which above all others won him success.

The essential element which the successful employer and the good manager seeks is a large number of efficient units, working together as one smoothly running, efficient whole, an organization working as one man, rejoicing in their work and proud to do it well. The significant fact is that the time has passed when this can be attained by brutality, coercion, threats or violence. The employer who in the future uses methods such as these will find his pathway strewn with a succession of labor troubles.

The value of organization that develops *esprit de corps* cannot be better illustrated than by the following experience:

A Brooklyn laundry employed a woman whose duties were to look after the girls employed there, to guide the social activities of the establishment, to conduct a lunch room and rest room, to act as nurse, physician and counsellor—in short, to create an *esprit de corps* among the workers. There were many scoffers at this policy, and one man boasted loudly that “this sort of business would not last a year.” Not long after her appointment, the laundry building burned to the ground. The laundry business, unlike many others, cannot stack up its orders and wait. If it ceases to work for a single week, or even gets its deliveries out later than Saturday night, it ceases to be a laundry in any active sense of the term. The fire occurred on Saturday night. Sunday and a part of Monday only could be used to find new quarters, which consisted of attics and a basement, and some other places which were available for night work. The fire occurred just before the holidays, when the demand for girls especially at the department stores was constant and the wages offered were high. During the six weeks following the fire, that working organization hung together in spite of the basement and attics, night work and Sunday work. Out of a force of one hundred people only two deserted in this emergency. And the man who had scoffed at the innovation came to the president of the concern and said to him: “Any firm that has an organization such as yours needs no other security. Here is \$100,000, go and build a new factory.”

There is no special reason why this sort of common sense on the part of employers should be called by any particular name. Yet it is still sufficiently rare to be in many respects remarkable. The fact is that it is merely good management for an employer to seek to create among his employees, an *esprit de corps*. It is only a very essential part of good management that he should seek to develop an efficient working force, an efficient whole composed of efficient individuals. He cannot develop such an efficient whole in a poorly ventilated, unsanitary shop, where workers are always at low ebb of vitality. He cannot have a satisfied group of workers so long as they feel that they are not adequately rewarded for what they do, nor as long as one thinks that he is not as well paid as his fellows. Nor is it possible for the employer to develop this effi-

cient working force from a number of inefficient or unskilled individuals. But, above all, the employer should recognize that his men are human, and that arbitrary and despotic control is a thing of the past, in industrial management as well as in political government. Employers must recognize that until employees have some share of jurisdiction over conditions relating to themselves labor difficulties will continue.

There are two examples in recent experience that illustrate the possible directions which this new industrial democracy will take. These two experiments are quite different; for one is being carried out entirely within a single establishment, while the other comprehends an entire local industry.

In the first case, the employees are strongly organized, not in a trade union, but in an organization for self-government and for control of all working conditions. The organization is a complete one, with all the officers and committees necessary for making it completely democratic. Elections, which are held annually, are close and exciting and the electioneering and campaigning is vigorous. Committees are appointed, and these have jurisdiction over certain features of the work of the employees' organization. There is a library committee, a lunch room committee, a suggestion committee and others throughout the whole range of activities. The organization through its regularly elected board has final jurisdiction over all questions concerning the workers. Disputes regarding wages, hours, holidays and working conditions and all other questions are settled *finally* by this board. The power reposed in the board is so great that no employee can be discharged without its consent. If the superintendent wishes to discharge a worker, consent must be given by the board, composed of employees. The plan in this instance has worked out with great success. The firm during the last decade has been probably the most prosperous of the kind in the locality. The explanation is not far to seek, for here is an establishment where every employee has a vital interest and every employee has a share in the management.

The second experiment is the result of a prolonged and hard-fought labor conflict, out of which emerged the Joint Board of Sanitary Control.² The cloak and suit industry had been carried on for many years by the labor of men and women, notoriously

²See pp. 39-58.

overworked and underpaid. The general working conditions of the industry were especially bad. In the agreement of settlement there was provided a joint board composed of representatives of the workers, the employers, and the public at large, which was to have jurisdiction over the working conditions in all the shops. The board to-day maintains offices and an inspecting staff and the administration of it is practically in the hands of representatives of the employees. The rules of the board are law in the various shops, and failure to comply with these regulations at once gives valid reason for the withdrawal of all the workers.

There are points of strength and weakness in each form of organization. In the organization within a single concern, the entire success of the experiment depends on the good will and sympathy of the employer. This once attained, freedom of development and increase of functions in the hands of the employees are likely to grow rapidly. This form of organization will be slow to develop, for the average employer is very conservative, and it takes many hard knocks to convince him that the old policy toward his employees is fundamentally wrong. On the other hand, the organization of an industry such as the cloak and suit industry in New York, suffers because it is the result of an alignment of employers against employees, and more or less consciously, the idea of opposition dominates each side, making absolute cooperation almost impossible for a long time. Still this form of organization forces many employers into line who would otherwise not recognize the rights of any man.

In short the first form offers the advantages of a much more highly developed type of industrial democracy. The second, though less developed in this respect, has possibilities of wider scope and of more rapid extension within an industry.

The movement for the all-round betterment of working conditions is advancing rapidly in this country. Not only are individual employers becoming more and more interested, but national and local organizations of employers are actively engaged in investigating and putting into practice the best of what has been tried out. It is not too much to expect that marked advances will be made in the near future largely through the agency of employers themselves.

THE JOINT BOARD OF SANITARY CONTROL IN THE CLOAK, SUIT AND-SKIRT INDUSTRY OF NEW YORK CITY

BY HENRY MOSKOWITZ, PH.D.
Secretary.

The sanitary control of industry is usually associated either with governmental regulations embodied in statutes passed by legislators and enforced by administrative departments organized and manned by public officials; or it may become the concern of enlightened employers who invest capital in modern means of ventilation, safety, and sanitation, and employ welfare workers to carry out a policy of enlightened self-interest. Such welfare work is chiefly the interest of the employer and becomes at best an expression of industrial benevolence or paternalism. Even where the employer endeavors to secure the cooperation of the workers, he frequently fails because they are suspicious of any welfare work which is not democratically supported and controlled.

The cloak and suit industry in New York City is one of the most important of the garment working trades. It is said to have an output of about two hundred and fifty million dollars a year, and a working population of from sixty to seventy thousand during the busy seasons.

The sanitary conditions of this industry have been typical of the garment working trades; but in recent years many of the cloak manufacturing establishments moved into large modern loft buildings which have multiplied in the upper section of the city of New York, bounded by Fourteenth street to Twenty-seventh street in the northerly direction, and Broadway to Seventh avenue in the westerly direction. This industry has been gradually progressing with respect to output and business organization so that at the present time the most prosperous of these establishments are housed in modern loft buildings. For a long time the vast majority of these factories were located in unsanitary places where the workers were congested in unventilated shops with poor lighting facilities, inadequate fire protection, and unsanitary arrangements.

While the sweat-shop is being eliminated as a type, the largest number of establishments are still located in unmodern buildings. In the smaller shops on the lower East Side the sanitary arrangements for the workers require considerable attention before they can be regarded as up to the standard. Little consideration has been given to sanitation by the vast majority of the manufacturers in this industry. For this reason one of the grievances in the general strike of 1910 was a demand for clean and sanitary shops.

The general strike of 1910 came like an eruption as a result of grievances which were smouldering and which required accumulation to burst into flame. After nine weeks of struggle the strike terminated in a protocol of peace which marked an interesting constructive experiment in collective effort on the part of the employers and the union to solve some of the difficult labor problems of the industry. It is not germane to the subject of this article to enter into a discussion of the details of the controversy causing the general strike of 1910. To throw light on the central problem of the sanitary control of this industry, cognizance must be taken of the peculiar characteristics of the cloakmaking industry respecting its working personnel, the social conditions surrounding the workers, the nature of the competition among the employers, and the effect of the yearly influx of immigration which makes its annual contribution of new recruits to the industry and necessarily complicates the problem of union organization.

Cloak making is essentially an immigrant industry, and, like most immigrant institutions, it is constantly fluctuating in its working population, its employing class, and even in its labor leadership. This is not difficult to explain, for the new immigrant cannot strike his roots deep into the new land. His movements, therefore, lack stability. Besides, the large mass of Jewish cloak makers look forward to emerging out of the working class. Many of the employers have been recruited from the workers. They become small contractors and manufacturers by starting a factory with a little capital. It has not been difficult in this industry to make a start in this way. The small man in the industry has always been in the position of the despised minority in a three-cornered fight. His assistance is sought by one of the two chief contending parties to bring the other to terms. The union uses the small manufacturer during a strike to keep a number of the workers employed, and by

the strike assessments add to the munitions of war against the more substantial employers. They have served as a club swung over the heads of the big men in the industry to force them into submission. The strike offers a rich harvest to the little men who snatch the opportunity to sign the union agreement, and by keeping the men working during the strike, supply the eager demands of the retailers inconvenienced by the cessation of work in the large factories.

When the dull season arrives, these small manufacturers have not hesitated to violate the agreement, and withdraw the concessions wrested from them by the union in the busy season, when their need for labor was great. If the small manufacturer is the tool of the union in times of war, he serves the large employers in times of peace; many of whom have had their goods manufactured by contractors and sub-manufacturers under conditions and for prices in violation of the union agreement. The practice has often been forced upon the employer in self-defense, to meet the unequal conditions of competition created by the existence of the two classes of employers. Equal conditions of competition have been the crying need of the substantial manufacturers in the cloak and suit industry, and uniformity in the terms of labor, the fundamental demand of the union; but labor's demand for uniformity can be fully met only by answering the substantial employers' need for equal conditions of competition. The obstacle to the realization of these demands and hence to permanent progress in the industry is, therefore, this large class of small manufacturers who have created and still create in the industry a house divided against itself. It seemed to the enlightened leaders that organization on both sides would answer the needs of the employers for equal conditions of competition, and of the union for uniformity in the terms of labor. The preferential union shop suggested by Louis D. Brandeis presupposes two strong organizations of workers and of employers negotiating with the machinery of adjustment, which tends to approximate the conditions they so devoutly wished for.

Without discussing the theory of the preferential union shop, it is important to make clear that the chief motive of the responsible employers of labor for the open recognition of the union which this plan implies, has been the hope that through a strong organization of labor exercising pressure upon every manufacturer in the industry, equal conditions of competition will be created. The union leaders,

on the other hand, hoped through negotiating with an organization of the larger and more responsible employers, to force the small man into maintaining the terms of the union agreement. Many of these small men would be driven out of the industry if they could not violate the terms of the union agreement.

One of the methods of equalizing competition was the Board of Sanitary Control, suggested by a representative of the Employers' Association. The more substantial employers were eager to accept this method of collective effort by both organizations to establish sanitary conditions in the industry; for it is not only industrial decency—it is good business.

The Joint Board of Sanitary Control was created in article xv of the protocol, which reads: "The parties hereby establish a Joint Board of Sanitary Control, to consist of seven members, composed of two nominees of the manufacturers, two nominees of the unions, and three who are to represent the public; the latter to be named by Meyer London, Esq., Julius Henry Cohen, Esq., and Louis Marshall, Esq.

"Said board is to establish standards of sanitary conditions to which the manufacturers and unions shall be committed, and the manufacturers and the unions obligate themselves to maintain them to the best of their ability and to the full extent of their power."

This provision of the protocol of peace established a democratic method of sanitary control and lodged a joint responsibility in employers and workers to create and maintain decent sanitary conditions in the shops of the industry. It also gave the Joint Board of Sanitary Control the power not alone of establishing standards, but of enforcing them through the agencies of the association and the unions who control the shops outside of the association, as it must be borne in mind that the members of the Cloak and Suit Protective Association, the party to this collective agreement, consist of the minority of the manufacturers in the industry, although they control sixty per cent of the output.

Very soon after the signing of this protocol, the Joint Board of Sanitary Control was organized with the following personnel: Messrs. Max Meyer and S. L. Silver, representing the Manufacturers' Protective Association; Mr. Benjamin Schlessinger and Dr. George M. Price, representing the unions; and Dr. William Jay Schieffelin, Miss Lillian D. Wald and Dr. Henry Moskowitz, representing the

public. Messrs. Meyer London and Julius Henry Cohen represent their respective clients, the unions and the Manufacturers' Protective Association. Since the organization of the board, Mr. Schlessinger has been supplanted by Mr. Abram Bisno, representing the unions, and Mr. S. L. Silver by Mr. E. J. Wile, representing the employers. The board organized with Dr. William Jay Schieffelin, chairman, Dr. Henry Moskowitz, secretary, and Miss Lillian D. Wald, treasurer.

The first duty before the board was to ascertain the sanitary conditions in the industry and upon the basis of this knowledge, to formulate standards. A preliminary investigation was organized. The expense entailed was borne equally by both sides. The establishment of schedules and the formulation of a card system was accomplished with the cooperation of well-known sanitarians and statisticians, like Professor C. E. A. Winslow, of the College of the City of New York; Mr. Frederick Hoffman, statistician of the Prudential Insurance Company; Dr. C. T. Graham Rogers, Medical Factory Inspector of the New York State Labor Department; Mr. E. L. Elliot, editor of the *Illuminating Engineer*, and Dr. H. D. Pease of the Lederle Laboratories.

The entire investigation was under the supervision of Dr. George M. Price. The following card schedule was finally adopted after a number of semi-annual inspections had been made:

JOINT BOARD OF SANITARY CONTROL.

Record Card No. Copy Certificate No.
 Street ——— No. 61 Fl. 2 Boro. M. Firm ——— & ———.
 Member of Contractor for Address

1	Building converted	20	Halls Light Yes	Inspection	Date	Male	Female
2	Stories Fr. 2 & Attic	21	Dress-Rooms no	1 174	1, 12, 11	1	1
3	Fire-Escapes 1	22	Sinks 1 Basins	2 619	8, 8, 11	7	5
4	Location Front	23	Windows No. 5	3 T.	2, 9, 12	6	2
5	Drop Ladders no	24	Shop Height 9½'	4			
6	Exits Clear no	25	Width 19' 8" Length 32' 5"	5			
7	Other Exits Yes	26	Mech. Ventil. no	6			
8	Fire Buckets no	27	Artif. Light Day no	7			
9	Extinguishers no	28	Gas	8			
10	Fire Hose no	29	Prot. Glare no	9			
11	Sprinklers	30	Power Foot	10			
12	Drill no Card Yes	31	Heat Steam	11			
13	Elevators no	32	Irons Heated by Gas	12			
14	Hoistways no	33	W. C. Male 1	District			
15	Doors in Locked no	34	W. C. Female 1	Defect Card			
16	Halls-Width 6	35	Material Floor cement	See defect card & report forwarded			
17	Stairs No. 1 Width 2' 8"	36	Location hall & yard				
18	Material wood	37	Separation Yes	Reference			
19	Treads Fair Rails Bad	38	Recep. Rubbish no	Shop Committee			

As a result, these standards were established:

SANITARY STANDARDS

1. No shop to be allowed in a cellar.
2. No shop to be allowed in rear houses or attic floors without special permission of the board.
3. Shops located in buildings two stories or more in height must have one or more fire-escapes.
4. All fire-escapes to be provided with ladders to the roof of same house or to an adjoining house; also with full length drop ladders properly located and adjusted.
5. In all shops which are not provided with automatic sprinklers, there should be kept a sufficient number of chemical extinguishers, or a sufficient number of fire buckets, properly located and filled.
6. Special caretakers to be appointed in each shop for the care of the fire buckets, and for their use in case of fire.
7. All openings and exits to fire-escapes to be left unobstructed by tables, machines, boxes, partitions, and iron bars.
8. No doors to be locked during working hours.
9. No smoking to be permitted in workshop.
10. Conspicuous signs to be placed throughout the shop, marking location and direction of exits and fire-escapes.
11. Fire-proof receptacles, lined with tin, and having a tin cover, to be provided, in sufficient numbers, for rubbish.
12. Halls and stairways leading from shops to be adequately lighted by natural or artificial light.
13. Stairs to be provided with secure handrails and safe treads.
14. Sufficient window space to be provided for each shop, so that all parts of the shop be well lighted during the hours from 9 A. M. to 4 P. M.
15. Where gas illumination is used, arc lights or incandescent mantles should be used.
16. All lights to be well shaded, to be placed above operatives, and not too near them.
17. At least 400 cubic feet of space, exclusive of bulky furniture and materials, should be provided for every person within the shop.
18. The shop should be thoroughly aired before and after work hours, and during lunch hour, by opening windows and doors.
19. No coal should be used for direct heating of irons, and whenever stoves are used for heating shops, they should be surrounded by metal sheet at least five feet high.
20. Walls and ceilings of shops and water-closet apartments should be cleaned as often as necessary, and kept clean.
21. Floors of shops, and of water-closet apartments, to be scrubbed weekly, swept daily, and kept free of refuse.
22. A separate water-closet apartment shall be provided for each sex, with solid partitions to extend from floor to ceiling, and with separate vestibules and doors.

23. Water-closets to be adequately flushed and kept clean.
24. A special caretaker to be designated by the employer to the care of the shop and water-closet apartments.
25. A sufficient number of water-supplied wash-basins to be provided in convenient and light locations within the shop.
26. Suitable hangers should be provided for the street clothes of the employees, and separate dressing-rooms to be provided wherever women are working.
27. Water-closet apartments, dressing-rooms, wash-rooms, and lunch-rooms to be properly lighted, illuminated, ventilated, cleaned, and kept clean.
28. All seats to have backs.

After the passage of the laws of 1912 recommended by the New York State Factory Investigating Commission, appointed by Governor Dix, the following new standards were added:

29. All waste materials, cuttings and rubbish must be removed twice a day from the floor of the shop and once a day from the building.
30. In all shops where more than twenty-five persons are employed above the ground or first floor, a fire drill of the occupants of such building shall be conducted at least once in every three months.
31. In every factory building over seven stories or over ninety feet in height in which wooden flooring or wooden trim is used and more than two hundred people are regularly employed above the seventh floor or more than ninety feet above the ground level of such building, the owner of the building shall install an automatic sprinkler system approved as to form and manner in the city of New York by the fire commissioner of such city, and elsewhere by the state fire marshal. Such installation shall be made within one year after this section takes effect.

With the establishment of the standards the board faced the problem of effectively enforcing them. For this purpose a permanent organization was necessary. The budget amounting to seven thousand dollars a year is borne equally by both sides. The permanent organization included a carefully prepared schedule card for each shop, a corps of inspectors who made semi-annual inspections, and a system of registering and following up complaints.

Wherever defects in sanitary conditions were found which violated the laws, complaints were sent to the department concerned with their enforcement, such as the municipal building department, the department of health, the bureau of fire prevention and the State Bureau of Labor.

The following definite procedure was established to enforce the standards of the board:

(a) After the first inspection a notice is sent to the owner.

(b) After the second inspection the inspector has a personal interview with the owner, explaining the exact defects and how to remedy them.

(c) If there is no compliance as a result of these efforts, the shop belonging to the association is reported to that body, with a request that the orders of the board be complied with by the owner. In the case of shops outside the association, the matter is referred to the union for similar action.

The board has experienced no difficulty in securing the cooperation of both bodies. The Manufacturers' Association has gone the limit to cooperate with the board, even where its orders necessitated important structural changes in the shops, involving considerable expense either on the part of the manufacturer or the owner. It was discovered by the board that thirty-eight shops in the association required such change. Counsel for the association helped to secure these changes in thirty of the shops. The remaining eight have not yet complied, but it is hoped that the association will soon report the changes in all the shops indicated by the board.

The union has not hesitated to take equally strong measures. In the case of establishments not under the control of the Cloak, Suit and Skirt Manufacturers' Protective Association, where an inspector, after an investigation reported a shop unfit for working purposes, it is re-inspected by the chief inspector and a report is submitted to the general board for its final decision; if it is then declared unfit for working purposes, the owner is requested to remove to other premises. If he does not comply, the union is instructed by the board to withdraw the men. This is a sanitary strike. Twenty-seven such strikes, involving 350 people, took place during the first year of the board's existence. The average duration of each strike was a fraction over a week. This measure is taken only when all others have been exhausted. Some of the sanitary plague spots of the industry have been destroyed through the sanitary strike.

The system of reward established by the board consists in granting a sanitary certificate to the manufacturer or owner of the shops where all the sanitary standards of the board have been complied with. It becomes a source of pride for the manufacturer to display his certificate in a frame, supplied by the board, in a conspicuous place in the factory. The certificate reads as follows:

No.....

SANITARY CERTIFICATE
OF THE
JOINT BOARD OF SANITARY CONTROL
IN THE

CLOAK, SUIT & SKIRT INDUSTRY OF NEW YORK

(Under the Protocol of September 2, 1910)

This is to certify that the shop of.....Located at
.....Floor.....Borough of.....has been in-
spected and found to conform with the

SANITARY STANDARDS OF THIS BOARD

[SEAL]

This certificate is good only for six months
from date of issue and is revocable by the
Board for cause.

It is countersigned by the secretary and by the chairman of the executive committee. It is granted for six months only, and is revocable at the pleasure of the board for violation of its sanitary standards.

The sanitary certificate controls the place, but not the garment. One of the complicating elements in the problem is the fact that the large manufacturers employ sub-contractors whose shops are below standard. The goods which he ships from his factory on Broadway are not necessarily made on the premises. There is a leakage therefore in the control of the cloaks made even by the large manufacturers. Recently the Cloak, Suit and Skirt Manufacturers' Protective Association agreed to compel the contractors employed by the members of the association to put their shops in a sanitary condition so as to make them eligible for the certificate. A large number of the contractors have received sanitary certificates. Doubtless shops of a considerable number of contractors are below standard. Under the circumstances the control of the premises and not the garment makes for such leakages, and represents concretely the difficulties arising from the existence of the two classes of manufacturers referred to.

In the face of this difficulty, the progress made in the sanitary improvement of the industry by the board during the short period of its existence is considerable. We shall record it in the following comparative tabulation of the results of the first, second, and third

Shops on 16th floor.....	6	0.80	11	2.00	7	2.00	0.20	1	0.20	17	8.00	41	2.00	63	14
Persons on 16th floor.....	20	3.00	20	4.00	10	2.00	0.20	40	0.20	1	0.50	51	2.00	.....	.....
Shops on 17th floor.....	37	5.00	14	2.00	1	0.20	0.20	1	0.20	1	0.50	53	2.00	.....	.....
Persons on 17th floor.....	19	3.00	13	2.00	2	0.40	1.00	140	0.60	4	2.00	38	2.00	236	114
No fire-escapes.....	5	0.70	23	4.00	5	1.00	.....	.....	.....	.....	.....	33	1.00	.....	.....
Insufficient fire-escapes.....	28	4.00	6	1.00	.....	.....	.....	.....	.....	2	1.00	36	1.00	.....	.....
Straight ladders.....	81	12.00	35	7.00	21	5.00	.....	.....	.....	14	7.00	151	8.00	153	78
No drop ladder.....	82	12.00	62	10.00	12	3.00	.....	.....	.....	3	1.00	159	8.00	.....	.....
Drop ladder too short.....	3	0.40	6	1.00	8	2.00	.....	.....	.....	1	0.50	18	0.09	.....	.....
Drop ladder improperly placed.....	234	33.00	43	8.00	14	3.00	.....	.....	.....	96	48.00	396	21.00	375	.....
Exits from bottom inadequate.....	84	12.00	24	4.00	22	3.00	.....	.....	.....	26	13.00	147	7.00	.....	.....
Aisles too narrow.....	44	6.00	21	4.00	23	5.00	.....	.....	.....	1	0.50	88	4.00	.....	.....
No fire buckets.....	409	56.00	220	42.00	162	37.00	.....	.....	.....	110	55.00	913	48.00	1379	1216
Insufficient fire buckets.....	41	6.00	36	6.00	12	3.00	.....	.....	.....	9	4.00	98	5.00	124	310
Shops with doors in.....	17	2.00	22	4.00	8	2.00	.....	.....	.....	.....	.....	47	2.00	.....	.....
Stairs dark.....	10	1.00	21	4.00	.....	.....	.....	.....	.....	.....	.....	31	1.00	12	48
Halls dark.....	16	2.00	4	0.80	.....	.....	.....	.....	.....	4	2.00	24	1.00	5	3
Treads insecure.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rails insecure.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Shops with no dressing-room.....	278	39.00	215	5.00	127	29.00	.....	.....	.....	16	8.00	647	34.00	1017	994
Shops with dirty dressing-room.....	32	4.00	9	1.70	7	2.00	.....	.....	.....	.....	.....	48	2.00	.....	.....
Shops with insufficient washing facilities.....	10	1.00	7	1.00	1	0.20	.....	.....	.....	6	3.00	24	1.00	.....	.....
Shops with dirty sinks.....	112	16.00	44	8.00	17	4.00	.....	.....	.....	61	30.00	234	12.00	.....	.....
Shops with no receptacles.....	174	25.00	54	10.00	8	2.00	.....	.....	.....	100	50.00	336	17.00	285	267
Shops using artificial light.....	92	13.00	97	19.00	78	18.00	.....	.....	.....	3	1.00	276	14.00	294	373
No protection from glare.....	415	59.00	288	55.00	94	22.00	.....	.....	.....	7	17.00	975	51.00	1272	1037
Gas lights too near.....	51	7.00	74	14.00	.....	.....	.....	.....	.....	.....	.....	125	6.00	.....	.....
Shops using foot power.....	177	25.00	18	3.00	9	2.00	.....	.....	.....	48	24.00	256	13.00	346	469
Ceiling of shop dirty.....	57	8.00	20	4.00	.....	.....	.....	.....	.....	10	5.00	87	4.00	147	141
Walls of shop dirty.....	88	13.00	23	4.00	.....	.....	.....	.....	.....	12	6.00	123	6.00	.....	.....
Floor of shop dirty.....	338	51.00	92	18.00	22	5.00	.....	.....	.....	116	58.00	568	30.00	200	.....
Windows of shop dirty.....	216	31.00	110	21.00	10	2.00	.....	.....	.....	71	36.00	407	21.00	221	.....
Shops having insufficient number of water closets.....	39	5.00	31	6.00	13	3.00	.....	.....	.....	14	7.00	101	5.00	302	243
Water closets with improper separation.....	45	6.00	10	2.00	2	0.40	.....	.....	.....	1	0.50	57	3.00	106	110
Wooden floor in water closet apartment.....	164	23.00	42	8.00	1	0.20	.....	.....	.....	47	23.00	256	13.00	545	770
Walls and floor of water closet apartment dirty.....	191	27.00	127	44.00	71	17.00	.....	.....	.....	36	18.00	425	22.00	.....	.....
Unventilated water closet apartment.....	7	1.00	6	1.00	.....	.....	.....	.....	.....	.....	.....	13	0.70	118	.....
Dark water closet apartment.....	108	8.00	36	6.00	6	1.00	.....	.....	.....	4	2.00	103	5.00	188	.....
Flush out of order.....	158	15.00	43	8.00	6	1.00	.....	.....	.....	5	2.00	162	8.00	85	127
Bowls of water closet dirty.....	241	34.00	98	19.00	30	7.00	.....	.....	.....	95	48.00	464	24.00	.....	.....
Seats of water closet broken.....	48	7.00	20	4.00	15	3.00	.....	.....	.....	8	4.00	91	4.00	.....	.....
Water closets in yards.....	27	4.00	3	0.60	.....	.....	.....	.....	.....	25	12.00	55	3.00	44	12
Water closets in halls.....	219	31.00	69	13.00	7	2.00	.....	.....	.....	37	18.00	332	17.00	240	111
Water closets in cellars.....	13	2.00	1	0.20	.....	.....	.....	.....	.....	4	2.00	18	1.00	.....	.....

inspections made in February, 1911, August, 1911, and February, 1912, respectively. The tabulation given on pages 48 and 49 covers the entire industry divided into five districts by the union, for the purposes of its control.

Very illuminating is the table showing the number of workers employed on the sixth story and above. Fifty-five per cent of all the workers in the trade are located on the sixth story and above. Of the 1,480 shops located in loft buildings there are 622 shops above the sixth floor, with a total of 37,813 employees, found in February, 1912, the month of the last inspection in the height of the season. This represents a very serious problem of fire protection. With inadequate exit facilities in case of fire, many of these loft buildings are death-traps though built of fire-proof material, as experience with the Asch Building, in which one hundred and forty-three girls lost their lives, has clearly demonstrated. Unfortunately these loft buildings are not adapted to the particular industries housed in them, so that many of these loft buildings often contain from two to three thousand workers in factories divided by inflammable wooden partitions. The majority have but two passenger elevators running; two stairways, and no fire walls providing for a horizontal exit. These buildings have been called death-traps by Fire Chief Croker and other experts in fire extinction and prevention.

The congestion of population in factories is one of the most serious fire problems affecting the safety of the workers in New York City. The high land values in Manhattan, the lack of transit facilities, the desirability of locating factories near the homes of the workers, explain the congestion of population in the factories. Under the circumstances it has been very difficult for the architects to provide sufficient exit facilities without taking away valuable space for occupancy.

The Asch fire has aroused the conscience of the community and steps, it is hoped, will be taken to provide adequate safety facilities. But no fundamental solution is possible without reducing the height of factory buildings. With the development of transit and the reduction by law of the height of buildings, it will be possible to provide adequate safety facilities for the workers. Under the circumstances the Board of Sanitary Control made considerable progress in establishing conditions of safety from the hazards of fire for the workers in the cloak factories.

After the first inspection the board discovered that 14 shops, out of 1,243, were in buildings without fire-escapes; that 114 shops had fire-escapes with no drop ladders; that many of the drop ladders were improperly placed and proved worse than useless, for they are heavy and difficult to adjust when the workers need them most; and that 78 factories had their exits to fire-escapes obstructed.

Using the most important items in the matter of fire protection, the following table will indicate the progress made by the board from the first inspection in February, 1911, up to July, 1912:

FIRE PROTECTION

	Feb., 1911. 1,243 shops.		Aug., 1911. 1,738 shops.		Feb., 1912. 1,884 shops.		July, 1912. 1,884 shops.	
	No.	Per cent.	No.	Per cent.	No.	Per cent.	No.	Per cent.
No fire-escapes.....	14	1.17	63	3.62	41	2.17	37	1.96
Insufficient fire-escapes.....					51	2.70	12	0.63
No drop ladders.....	114	9.17	236	13.52	38	2.01	26	1.38
Drop ladders improperly placed.....					36	1.91	25	1.32
Exits to fire-escapes obstructed.....	78	6.27	153	8.80	151	8.01	49	2.61
Exits from bottom of fire-escapes inadequate.....					159	8.43	30	1.59
Aisles too narrow.....					18	0.95	15	0.79
No fire buckets.....			375	21.57	396	21.01	175	9.28
Insufficient number of fire buckets.....					88	4.67	38	2.01
Empty fire buckets.....					147	7.80	50	2.65

Most gratifying is the progress made in fire protection by the Board of Sanitary Control in the East Side District, where the unsanitary shops are chiefly located, as the table on page 52 will indicate.

With respect to light and illumination, the investigation showed equally faulty conditions after the first inspection, and progress after the last inspection in February, 1912, though considerable improvement must still be made in this pioneer field of health protection for the workers. After the first inspection in February, 1911, 373 shops out of 1,243 were found using artificial light, and 1,037 made no provision to protect the eyes of the workers from glare; 60.65 per cent of the shops were found using illuminating gas, 25 per cent both gas and electricity, and 14 per cent used electricity exclusively. The 1911 inspection showed 1,086 shops out of 1,738 using gas, 257 using gas and electricity, and 382 using electricity alone. The use of gas as such does not indicate defective illumina-

FIRE PROTECTION ON EAST SIDE—700 SHOPS

	Feb., 1912.		July, 1912.	
	No.	Per cent.	No.	Per cent.
No fire-escapes.....	6	0.85	2	0.28
Insufficient fire-escapes.....	20	2.85	9	1.28
Fire-escapes with straight ladders.....	37	5.28	16	2.28
No drop ladders.....	19	2.71	10	1.42
Drop ladders too short.....	5	0.71	4	0.57
Drop ladders improperly placed.....	28	4.00	5	0.71
Exits to fire-escapes obstructed.....	81	11.57	7	1.00
Exits from bottom of fire-escapes inadequate.....	82	11.71	15	2.14
Aisles too narrow.....	3	0.42	1	0.14
No fire buckets.....	234	33.42	63	9.00
Insufficient number of fire buckets.....	44	6.28	4	0.57
Empty fire buckets.....	84	12.00	6	0.85

tion. It depends entirely upon the nature of the light, its location and the provision made for protection from glare.

In only 17 per cent of the shops inspected in February, 1911, was any attempt made to protect the operators from glare by suitable shades and globes. Some sort of shade was found in 466 of the 1,738 shops inspected in August, 1911, but few of these answered the purpose of protecting the eyes of the operatives from glare; in fact, powerful reflectors were placed on a 60 to 100 watt Tungsten lamp, producing an intense light very injurious to the eyes of the workers.

The inspection showed beyond a doubt that no attention has been given in the past by the employers to the adequate and proper lighting of their shops, with a view to preserving the eyes and promoting the health of the operatives.

The following table will indicate some progress made by the board in providing adequate illumination in the shops:

LIGHT AND ILLUMINATION

	Feb., 1911. 1,243 shops.		Aug., 1911. 1,738 shops.		Feb., 1912. 1,884 shops.	
	No.	Per cent.	No.	Per cent.	No.	Per cent.
Shops using artificial light.....	373	30.00	294	16.91	276	14.65
No protection from glare.....	1037	82.62	1272	73.13	975	51.22
Gas lights too near.....					125	6.63

Bad ventilation and overcrowding are common defects in the cloak-making industry, chiefly because it is a seasonal trade, and during the busy season of thirty weeks the shops are overcrowded with workers. The employer in leasing his shop does not generally calculate his space according to the needs of the busy season, so that during the height of the season the shops are taxed to the maximum capacity. The machines are placed in solid rows with little or no breathing space for the workers, who work not only by day, but sometimes at night. Since the bulk of the industry was at first conducted by employers of small means, their shops were not adequate. Such employers naturally economized both in the space they leased for the shops and in the sanitary arrangements necessary for the health of the workers. With the exodus to the modern loft buildings this condition has changed. The largest proportion of the trade is in the hands of the big firms who assume a policy of enlightened self-interest with respect to sanitation. It does not pay them to economize on sanitary conditions.

In the smaller houses, through the efforts of the rank and file of the labor organizations in the industry, conditions have been improved.

Though the investigation disclosed little violation of the law providing 250 cubic feet of space per individual, our inspectors' reports make it clear that this legal space is ridiculously inadequate. Overcrowded shops with very little free available space, upon measurement show the necessary 250 cubic feet. It is evident that with the ceilings 10 feet high, a 250 cubic feet give but 25 square feet of floor space, obviously a very small area. If we add to this the fact that no deduction is made for space occupied by machinery, persons, and by bulky material, the free space left under the legal 250 cubic feet standard is still further reduced. Though the purity of the air in the shop does not depend primarily upon the amount of cubic space available for each person, but rather upon the amount of air entering the shop, the inadequate space provided the operative makes special ventilating devices doubly necessary. Very little attempt was made to improve the ventilation in the factories through the use of such devices. The only means of ventilation used in the majority of the shops were ordinary windows, so that very few shops were found where the ventilation was good or even adequate.

The board engaged Dr. C. T. Graham Rogers, Medical Factory Inspector of the State Bureau of Labor, to make an intensive study

of the ventilation in the cloak shops. This study was published in its first annual report. Dr. Rogers states that his investigation clearly determined that the atmospheric conditions found in the majority of the shops are injurious to health and should be remedied. Much of the ill-health among the cloakmakers is undoubtedly due to the defective ventilation, to the foul air, and the stooping posture of the workers. To this cause in large measure the well-known tendency of the garment workers to respiratory diseases, especially tuberculosis, can be traced. Unfortunately very little progress has been made, even by the experts on ventilation, to give enlightened employers and labor leaders a definite standard of effective ventilation and definite methods of securing it.

The board realized that the sanitary conditions of the factories needed considerable improvement. The walls, ceilings, floors, and windows were found dirty in many of the shops; no adequate provision was made for the disposal of garbage; very few cuspidors were provided; and the separation of the toilet accommodations for the men and women was inadequate. In a large number of shops toilet accommodations were not provided in proportion to the number of workers, fixtures were found dirty, and the legal limit of one toilet for every twenty-five workers was exceeded in many of the shops; in some of them the ratio of one to eighty was found by our inspectors. The ventilation and lighting of water-closet apartments were bad.

The following table will indicate the progress made with respect to sanitary care:

SANITARY CARE

	Feb., 1911. 1,243 shops.		Aug., 1911. 1,738 shops.		Feb., 1912. 1,884 shops.	
	No.	Per cent.	No.	Per cent.	No.	Per cent.
Walls of shop dirty.....	144	11.58	147	8.11	123	6.52
Floors of shop dirty.....	.....	.....	200	11.50	568	30.14
Windows of shop dirty.....	.....	.....	221	12.71	407	21.60
Shops having insufficient or no water-closets	243	19.54	302	17.37	101	5.36
Shops having water-closets with improper separation.....	110	8.84	106	6.09	57	3.02
Dark water-closet apartment.....	.....	.....	188	10.81	103	5.46
Unventilated water-closet apartment.....	.....	.....	118	6.78	13	0.68
Flush out of order.....	127	10.21	85	4.89	162	8.59
Water-closet in yard.....	12	0.96	44	2.55	55	2.92
Water-closet in hall.....	111	8.93	240	13.82	322	17.63
Water-closet in cellar.....	.....	.....	.....	.....	18	0.95

In addition to investigation and enforcement, one of the most important functions of the board is the education of the employers and the workers on the need of sanitary improvements in the industry and their obligation to maintain them. The board realized at the very outset that only by a campaign of education can public opinion favorable to sanitary improvement be awakened. Without such awakening and the resulting cooperation on the part of the workers and their employers, the sanitary standards become dead-letters and the work of the board is reduced to the dead level of a bureaucracy. Democratic regulation of sanitary conditions in an industry averts the serious danger arising from a mere mechanical regulation, a charge frequently made by the workers against the efforts of the state to enforce labor laws and to regulate the conditions of labor in industry.

The board has carried on its propaganda through lectures, bulletins, shop meetings, mass meetings, articles in daily and weekly papers, read by the workers and their employers. Recently the Joint Board of Sanitary Control cooperated with the Board of Education in a series of lectures on the problems of factory legislation, cooperation, regulation and sanitation. The lectures were held in the auditorium of one of the largest school buildings located in the neighborhood where the vast number of cloak-makers reside.

The board has tried an interesting experiment in eliciting the cooperation of the workers by organizing sanitary shop committees in a number of the factories. These committees usually consist of three workers, one of whom is frequently the shop chairman. It is their function to lodge any complaint with the board for violation of the sanitary standards in the shop and to urge their fellow workers to help maintain the sanitary standards. There are at present 336 of such sanitary shop committees. Representatives of the board have frequently spoken at shop meetings and at the gatherings of the locals. The processes of education are slow, but the board has made a good beginning. It takes a long time to convince the workers of the importance of sanitary conditions in the factory. They are naturally more sensitive to the need of higher wages and shorter hours of work.

Recently the board has undertaken a physical examination of the workers for the purpose of determining the presence of an occupational disease. It has secured the cooperation of medical experts,

both as advisers and inspectors. The results of this examination will be a feature of the next annual report. They cannot be anticipated. The mere fact that eight hundred (800) workers have been eager to subject themselves to a physical examination reveals the possibilities of this democratic method of sanitary control in an industry. The workers were eager to help because they realized that the board was their agency, and they manifested not the slightest suspicion toward the board or its representatives whenever their cooperation was asked.

In conclusion we desire to quote an editorial published in a recent bulletin of the Joint Board of Sanitary Control, entitled, "A Year and a Half of the Joint Board":

A YEAR AND A HALF OF THE JOINT BOARD

The protocol, as a method of collective effort in industry, has made good in the Joint Board of Sanitary Control. If there are any doubters, we would respectfully direct their attention to the record of our third semi-annual reinspection, which we publish with this bulletin.

These facts stand out with compelling force:

1. The board now has a sanitary survey of 1,884 shops compared with 1,738 in the second inspection and 1,243 in the first. This indicates marked progress in the gathering of *facts* of the industry with respect to unsanitary conditions.

2. The number of shops with no drop ladders has been reduced from 236 to 38, or from 13 per cent to 2 per cent.

The doors opening in are still with us, but their number has been reduced from 97 per cent in the first inspection to 79 per cent in the second inspection and to 48 per cent in the last.

For other improvements in fire prevention, let the tables speak. This shows marked advance in fire protection.

3. The increase in the number of dressing rooms is indicated by the reduction from 79 per cent of shops with no dressing rooms in the first inspection, to 58 per cent in the second and 34 per cent in the third.

And progress in protecting the worker from eye-strain is shown in the fact that the shops unprotected from glare have been reduced from 83 per cent in the first inspection to 72 per cent in the second and 51 per cent in the third.

These and other facts in the tables indicate gratifying advance in the sanitary conditions of shops.

But most significant and reassuring is the statement that 25,336 persons, or 51 per cent of the workers, are employed in shops having our sanitary certificate. This means that over one-half of the workers in our industry work in factories in which the standards of the board are complied with.

The sanitary sore spots of the industry are to be found in the small shops located chiefly on the lower East Side. Some progress has been made there,

especially through the efforts of the board's inspectors in recent weeks, but only the surface has been slightly scratched.

The observations and suggestions of Miss Schneiderman in her impressions, published in this bulletin, are so sound that we need only give our unqualified assent to what she has so ably pointed out.

The supreme test of the board's efficiency will be the gains made in the sanitary improvement of these smaller shops. Our efforts to push the work with vigor where it is most needed will not be abated, but we cannot repeat too often that we must receive the cooperation of the workers and employers in these shops, many of whom are still blindly indifferent to the need of well-ventilated, well-lighted and sanitary surroundings in the factory.

Through the organization of the sanitary shop committees, the lectures and, if need be, the sanitary strikes, we shall continue our crusade.

In the Joint Board of Sanitary Control, the method of the protocol, of representative industrial government has been justified by its fruits, and with future experience, this instrument of collective industrial effort will bring even richer results in approximating industrial justice for those engaged in the industry in the future.

This bulletin was published in May, 1912. Since that time the board has issued 501 sanitary certificates, which means that 30,201 workers, or 60 per cent of the workers, are now employed in shops which have complied with the board's standards.

Gratifying as is the progress here indicated, permanent sanitary control cannot be established until the board can assure the consumers that the garments they purchase were made under sanitary conditions. The certification of a Broadway establishment does not prevent the owner from having the largest number of his garments made in the filthy shops of his contractors or sub-manufacturers. They may be shipped from the sanitary factories but made elsewhere under more unwholesome conditions.

Some of the manufacturers in the association appreciate this responsibility, and have forced their contractors to comply with the standards of the board, but a comprehensive control of the garments manufactured in the industry by all classes of manufacturers will only be effected when the consumers are alive to their responsibility and cooperate with the board which represents workers, the manufacturers and the public, by purchasing garments manufactured in protocol shops. Through the device of the label issued by the board and attached to the garment, the consumer is assured that the cloak purchased was made in a shop where the laborers were not overworked by long hours or exploited by low wages or devitalized

by inhuman conditions of labor. A protocol label issued by the board would guarantee union conditions, for a protocol shop is one where union conditions, wages, and sanitary surroundings prevail. It may prove more effective than a union label. It is a responsible certification to the entire community by their representatives, in conjunction with the organized workers and organized employers, that the garments they purchased were made in factories where fair play to the workers and to purchasers was observed. It is not visionary to conceive that the revenue derived from the purchase of the labels by the manufacturers would be sufficiently large to cover an extensive advertising campaign, by which an effective appeal could be made to the consuming public to patronize the protocol shops. This represents one of the effective methods of realizing the demands of the employer for equalizing conditions of competition, and of the workers for creating uniformity in the terms of labor. The protocol label is still an aspiration. With the light of experience derived from further experiment with the protocol, this aspiration may become a reality.

ATTITUDE OF LABOR TOWARDS SCIENTIFIC MANAGEMENT

BY HOLLIS GODFREY, Sc.D.,
Consulting Engineer, West Medford, Mass.

It was the autocrat, if I remember rightly, who said that there were always three Johns existing simultaneously in any individual John: the ideal John as John is known to other people; the ideal John as John conceives that he knows himself; the real John different from both the others and known only to his Maker. What that kindly philosopher would have said as to the possible number of attitudes of any group of men towards his own science of medicine or of the attitudes of labor towards our new science of management it is hard to say. One piece of advice I believe Dr. Holmes, with his scientific liking for definiteness of literary expression, would have given when confronted with a topic like that which heads this paper. I believe that he, like myself, would have felt that a science is too protean, too many sided, for any brief discussion of general attitudes to be effective. To gain real value in any brief consideration of a science we must separate out a single theory, a single law, or a single set of principles from the whole content of the science, consider the attitude of a definite type of man or group of men towards that theory, and limit the discussion to that. Nothing less than a volume would give definite form to the whole group of laws and theories that make up the science of management. Another volume would be needed to define all the different attitudes of labor towards that science.

Certainly the general theory of the science of management, of the change of mental attitude that results in true cooperation, of the substitution of exact knowledge for guess work, of the turning of all that is best in science and in scientific method to the use of industry, is too great for general discussion here. We must concern ourselves in this instance with those vital needs of the worker which most affect his attitude towards any new philosophy of industry, recognizing that his attitude is sure to be largely affected by the completeness with which that new philosophy, carried out in prac-

tice, meets his most vital wants. I have been so fortunate as to be personally acquainted with some hundreds of workmen engaged in different industries, and I have studied with deep interest their aspirations and their needs. I have come to see that most thinking American workmen share in common a group of wants which they desire not only for themselves but also for their children. To the best of my ability I have endeavored to define those wants in the paragraphs given below. These wants are—

Favorable working conditions which will enable the worker to preserve that bodily strength which is one of his most valuable assets.

Permanency of employment, which will enable him to order his life on a regular basis.

Good wages, such as will enable him to keep up a thoroughly self-respecting standard of living.

Cooperation, the feeling of working with others towards a desired end rather than working for others in the gaining of an unseen end.

Opportunity for education, which means opportunity for advancement.

Justice, which means some fair basis of contract between employer and employee.

All those wants are supplied by the science of management. The attitude of the thinking worker, who is in a shop where scientific management is installed, who actually sees his most vital wants being gradually met month by month and year by year as the science progresses is the attitude of labor which I have chosen to consider here. That attitude passes from tolerance to cordial appreciation and to hearty liking. To trace the changes through the meeting by scientific management of all the worker's wants, however, would require ten times the space at our disposal here. A single want must be chosen, and the nature of that want and the way in which the principles of scientific management meet the needs of the thinking worker in the scientifically managed shop must be considered. Only when limitation and definition take the place of generalities can understanding of a new science advance. I have, therefore, limited myself here to the desire of the worker whom I have chosen as my type for that education which means advancement, and to the attitude of that worker towards the educational theories of the science of management.

From the very first, education was made a vital part of the science of management and few of the theories of that science are more completely differentiated from those of the older factory theory of management. Recognized at an early stage as a necessity, the education of the worker has been a matter of constant development along the lines which Dr. Taylor has set forth in the second and third of his "Principles of Scientific Management."

It is rather remarkable that the introduction of education into the working hours of industry did not begin earlier, for the desire for education, for self-development, is in the very air that the American breathes. Wearied with the day's toil, thousands of ambitious workmen hasten to the night school in an effort to obtain the education that they crave. Thousands of other workmen struggle in their rooms with the lessons of the correspondence school. How great their effort is, how overmastering that desire for education, few realize save the teachers of those classes. It is a mighty force and I, like hundreds of others who, in years gone by, have taught in the night schools, bear witness to its greatness.

That stimulus to advance through education which finds expression in night work comes from the individual's desire for his own mental and material advancement. Stronger still is the parent's desire for the educational advance of the child, a desire which finds expression in the effort to give the children every possible year of school, in the pride in the child who advances rapidly and in the efforts made for the little ceremonies of graduation. A theory of industry which omits to consider this vital want of the people is incomplete. And we may fairly say that the older theories of industry have been incomplete in that they have given little opportunity for the workman who desires advancement through education, and have confined the major part of the worker's effort for education to his hours outside the factory.

It is a most significant fact that the educational theories of the science of management, assuming far broader responsibilities, assume the constant educational development of the worker during his working hours and proves that that development is profitable to employer and to employee alike. How lamentably the older systems of management failed along these lines many of us know. The beginner in industry, once he left the school behind and entered the doors of the factory, was (and is) but too likely to find himself bound

by the old factory system to some single monotonous task, to toil wearying and stultifying to body and spirit alike, to a repetition tending to make automatons of human beings by the continual repeating of like tasks. Of good coherent instruction in shop methods there was practically nothing. The general foreman of the shop into which the beginner went was too busied with a hundred other cares to give more than a cursory attention to teaching anything. Many of the older workers had no real understanding of the principles underlying their tasks and most had little or no skill in teaching. The education of the beginner in the shop consisted largely of painfully picking up such scattered information as he could reach, generally obtaining the few facts he learned by a most wasteful expenditure of energy, only able by really prodigious efforts to overcome the barrier between unskilled and skilled labor.

It is entirely true that a comparatively small number of skilled workers were developed by this process, a small extra energetic minority, who, by dint of making the great effort required for the carrying on of night school or correspondence courses, or by an extraordinary persistence which dragged from foremen or shopmates the traditional knowledge of the trade, made themselves skilled workmen. But men with such persistence are the exceptions. Offered little opportunity in industry itself, unable because of lack of facilities, of physical or mental strength or of money in excess of a bare living wage, to obtain education, the majority of workers under the old factory system fell readily into low waged positions, became automatons and, losing initiative and mental alertness, limited their own advance. Nor has the penalty for this policy fallen upon the worker alone. The consumer has suffered in increased cost for lack of education. Stupidity, blunders, and delays make goods produced high in cost of production with increased selling cost to the consumer. Too little attention in the consideration of the high cost of living has been paid to the limitation of output that results from the lowering of production due to the untrained worker.

It is true that these concepts are not widely realized. It is entirely possible that the average thinking American workman does not wholly formulate his discontent with the opportunities of advance offered himself or his child under the old forms of management. But it is not a matter of question that discontent with the oppor-

tunities offered for mental and material advance exists and that this discontent is a powerful factor in the present industrial unrest. I can speak for many thinking workmen, whom I have known, when I say that the blank wall which so much of present day industry presents against their advancement is the basis of one of the bitterest and best grounded causes of complaint against the old style of management.

With the realization of that ground for complaint in the past, it is no wonder that the thinking workman scrutinizes carefully any new philosophy of industry which comes before the world to see what it offers along educational lines. When he finds in the science of management a complete theory of education aimed towards the highest possible development of each individual worker; when he finds that the education of the worker in the shop is an inherent part of that theory of management; when he finds that no pains are spared to make that shop education of the highest possible grade; when he sees those theories working out in practice, the worker hails that opportunity with joy not only for himself but even more for his child. He sees that here, as in so many other places, scientific management offers every worker an opportunity to reach a far higher plane than the older theories of management ever offered him. He sees that it opens a gate which was shut before.

Specifically what do the educational theories of the science of management offer the worker? They offer him the best knowledge or information obtainable on any given subject, express that knowledge in the best text-books obtainable and offer the worker the best teachers obtainable, all with the intention of enabling him to develop himself to the greatest possible extent. We may divide the advance of educational work in any industry into three divisions. The obtaining of necessary exact knowledge or information concerning a given subject or the development for the worker's use of the content of a course; the preparation of texts which shall record that knowledge and make it available to the student; the obtaining and developing of teachers to teach the best methods of using the knowledge so obtained and so recorded. Suppose we take up those three divisions and see what the attitude of the worker is towards the work done in each of these divisions.

First and foremost the worker realizes that the knowledge gathered for his use is, in Dr. Taylor's phrase, "exact knowledge

substituted for guesswork." The worker has been used, under the old style of management, to seeing methods laid down by guesswork without sufficient study of actual conditions, sometimes apparently quite without reference to actual conditions. He believes in many cases that he has better methods than the ones given him, but he is not encouraged to mention his own beliefs. If changes are made, they are made solely by command, and the basis on which these changes are made is hidden from sight.

The difference which exists between these methods and those followed in scientifically managed shops could hardly be more diametrically opposed. In shops where the science of management is in force, the worker finds that all the best workers in the shop are cordially invited to give the best they know to bring about the development of a science of the particular business in which they are engaged. He finds that before an instruction card is made out at all (or to put it otherwise before a lesson is set down) that the methods of doing the work in question have been studied by a technical expert who has called to his aid the combined knowledge of the best men in the shop. He sees the careful development and practical experimental study of the work going on around him, and comes to recognize that this work is being done by men in whom he has confidence. He finds that the engineer in charge is wholly ready to talk and explain the work that is going on, glad to receive and use suggestions and wholly ready to recognize the practical value of the thought of men who have been working on a given type of work for years. He finds, moreover, that these engineers are proceeding on certain basic principles, that they are working to apply to industry the best that science has accomplished, and that they use the best modern scientific methods in discovering the unknown in industry. Here, generally for the first time, the worker meets the open mind of science, which refers all questions primarily to collected, correlated and recorded fact instead of to any man's guess or theory. One result is inevitable: the worker comes to thoroughly respect the knowledge or information of his trade thus obtained.

The obtaining of knowledge is but one division. Its proper expression is quite as important if it is to be useful to man. The worker, under the old style of management, was used to verbal orders hurriedly given by a foreman or to written general instructions inadequately expressed and badly written in long hand. Under

scientific management, he receives a carefully prepared instruction card stating minutely the best method for doing the work, and illustrated, wherever advisable, by drawings or photographs, showing the proper methods to be used. With illiterate labor the instruction card may be wholly made up of pictures showing the proper methods of performing the operation in question. With highly skilled labor the illustrations may be wholly omitted. In any case everything that can be done is done to make the work (or the lesson, if you will) clear to the worker. The worker finds that expression is not considered a minor matter and that the making of instruction cards is not a matter left to any chance clerk. Rather it is a matter to be studied carefully by the best brains in the shop. He finds, moreover, that he himself is expected to bear his part in the making of those texts, in that he is expected to report back whenever an instruction is not clear to him and he finds that the instruction cards are constantly being revised in an attempt to gain greater clarity of expression. Instruction cards of this type produce respect in and obtain cooperation from the worker.

All the work of obtaining the necessary knowledge or information, of recording it and expressing it in the form of instruction cards is preliminary to the actual doing of the task or the lesson. That performance is the next step to be considered. Suppose we assume that the time has come for the worker actually to do the task under guidance. Let us stop a moment and briefly compare the conditions, so far as educational opportunity goes, between that which existed at the beginning of the worker's task under the older types of management and that existing under the science of management. Under the former the worker began his task with information picked up and gathered at odd minutes from shopmates and foremen, some of it good, some of it bad, an odd mixture whose effectiveness was distinctly dubious. Under the latter the worker begins a task which is the result of the best knowledge on the subject available, of knowledge collected and sorted with care, by the joint efforts of technical experts and practical shop men, a task which has been expressed by men trained in expression. Is it any wonder, under those conditions, that the respect of the worker for the new type of management begins to turn to liking?

To make recorded knowledge live we must have the teacher. Few of the theories formulated by Dr. Taylor are essentially greater

than that which concerns the reversal of the theory of foremanship. The old foreman was a commander and a driver. The functional foreman of scientific management is a teacher and cooperator. The old foreman ordered. The new functional foreman teaches, clears the path and shows the way. According to Dr. Taylor's theory the teaching of men in the shop is divided among eight teaching and recording functions. Stated in the form of functions, these eight are as follows:

One, routing; determining and recording the sequence and the way the general operations shall be done, or, to put it otherwise, determining the proper paths for the flow of work.

Two, instruction card making; the writing and revising of the texts which show the best methods of doing any given operation.

Three, preparation; the preparing and inspecting of all materials to be used in the doing of the task and instruction in the methods to be used in preparing to do the work.

Four, machine control; the determination of the proper machine adjustments which will make for the best accomplishment of the task.

Five, inspection; the keeping up of the quality of the work.

Six, maintenance; the keeping up of the equipment to the highest point of efficiency.

Seven, recording; the entry of all records which concern the operation.

Eight, discipline; the arbitration of all those questions which must occasionally arise when two or more men work together.

Wherever men work in cooperative industry those eight functions must exist. The more completely those functions are developed the better the work and the greater the educational opportunity of the worker. When the shop is large enough one man or more should be assigned to each function. Where the shop is small more than one function may be assigned to a man, remembering always that efficiency in any one function in an individual varies with the number of functions he has to carry. The greater the number of functions assigned one individual, the less his effectiveness in any one. Taking their names from the old nomenclature of iron and steel, where the science of management first began, a part of these teachers and recorders were called bosses, another part, because they worked at desks, were called clerks. So the men who worked

at routing, instruction cards and records, as they worked at desks, were called route clerks, instruction card clerks and cost and time clerks respectively. The men who worked in the shop, who performed the functions of preparation, of machine control, and of inspection were called gang bosses, speed bosses, inspectors and repair bosses. The man who acted as arbiter was called the shop disciplinarian. Those names, used originally in the iron and steel industry, as was said before, have changed as the science of management has progressed into other industries, the gang boss is now called the group foreman in some industries. The speed boss is called the machine instructor, the repair boss has disappeared into the department of maintenance. Here, as in all science, the form and the word is a minor thing, the spirit is a great thing, and the spirit of functional foremanship is cooperation and education. Every functional foreman performs some educational function.

If education is to be effective the student must respect the ability of his teacher. No one, certainly, is better able to penetrate the cloak of pretended knowledge than the thinking American workman. It becomes evident, therefore, that this new conception of a foreman changes the basis on which a foreman is to be selected. Instead of being the task master who is to force the maximum out of his workers, he is the teacher who is to show the worker the best way and teach him how to follow it. The choice of the foremen teachers then must be a matter of very real importance and the importance of selecting and training those teachers is fully recognized by those working in the science of management.

Many qualities are desirable in a functional foreman, but three things are absolutely essential: power to do and do well any task or lesson given to a worker; power to express to the worker the best way of doing a task; and willingness to cooperate with the worker in working out the accomplishment of a task. First and foremost the functional foreman must have a practical knowledge of the tasks to be done. Nothing would be more foolish than to engage as a teacher of French, a master who knew only German and English. Nothing would be more foolish than to engage as a functional foreman a man not thoroughly able to perform expertly any operation to be done by any operative under his charge. The functional foreman must primarily be able to serve as demonstrator. He must secondarily be able to express his knowledge. He must thirdly be

willing to cooperate. It speaks well for America that men who can do all these things can be found in the industries into which the science of management has gone.

Functional foremen so chosen command the respect of the worker. It is of importance that their functions should most effectively advance the education of the worker. Let us see how the work of instruction is divided among the different functions. The functions of collecting knowledge, which includes the foundations of the function of routing and of expressing it in the form of instruction cards, have already been considered. That leaves six of the functions to be briefly considered here under the general heads of the duties imposed on them.

Preparation: The hindrances placed in the worker's way through lack of preparation under the old types of management have been great. The worker has been accustomed to being forced to wait for supplies, tools and materials; to being forced to obtain for himself this tool or that instruction. Under scientific management he finds that these nagging annoyances have been removed and that the functional foreman in charge of preparation sees to it that everything necessary for the task is at the worker's bench. This is the work of the gang boss, to use the machine shop term, and it is the duty of this functional foreman to see that the worker understands the proper setting of the work in the machine. The function of the gang boss includes instruction in all parts of the work up to the actual starting of the machine or hand operation.

Machine control: Preparation being completed, the machine instructor (first inspector or speed boss) takes charge, sees that the machine is properly adjusted, and in machine shops looks especially to the proper setting of speeds and feeds. (Whence the name "speed boss.") It should be particularly noted that the speed boss in a shop under modern methods of scientific management has nothing to do with the speeding up of the men, and that any foreman who endeavored to drive his men or to speed them up beyond the time justly and cooperatively set for their task would be severely reprimanded. The science of management has no use for the ineffective drive and hustle, the eternal rush, of the old type of management. It uses far fairer and more effective means to obtain increased effectiveness and increased output. The speed boss is expected to remain on any new work until the man doing the work understands

the best methods of doing that work, until the worker can follow his instruction card properly and until the work is proceeding satisfactorily. More than that the speed boss or machine instructor is required to be on call at any time during the whole operation to give assistance whenever needed or to step to the machine and do the work properly himself should need arise.

Inspection: The inspector determines the quality of the work, instructs as to methods for obtaining satisfactory quality, advises as to finish and completeness, teaches the care which produces best results and draws from the finished product of any operation the lesson which may bring an improved product the next time the operation is performed.

Maintenance: The proper care of a workman's tools and appliances is an art which, as the skilled workman recognizes, adds much to the effectiveness and ease with which the operative does his work. The repair boss (the maintenance man) teaches the worker the proper upkeep of his machine and permanent tools. The tool room assumes the responsibility of furnishing him with all other tools, kept in the best possible condition.

With proper instruction from teachers whose knowledge and ability he is bound to respect, who perform the functions outlined above, with properly prepared instruction cards and with the best available knowledge at his command, the worker enters upon the task that is set with a realization that every effort has been taken to give him the best methods possible. To put it another way the worker enters on the laboratory determination of the task set down with confidence in the work already performed. The worker is required to do the task or lesson set down in the way that it has been formulated. That is a *sine qua non* of educational theory that exists in every school in the country. Everywhere the student is required to do the lesson set by the teacher. Nowhere can he wander to other lessons at his own sweet will. Dr. Taylor in the third of his principles of scientific management speaks of bringing the science and the worker together. Like every other educator, he requires that the student shall do the work assigned at the time assigned. The workman, once given the formulated task, must do it in the way set down and according to the instruction of the teacher foreman. A student required to do a laboratory exercise on the determination of a specific heat can hardly expect to substitute for

it one on specific gravity and find the substitution satisfactory. The operative is not required to do a new task involving new elements in any given time the first time it is presented to him. It is the method, not the time, which is involved in the first learning of new tasks.

The task once done in the way shown, however, a new theory presents itself. In the ordinary schemes of education, as of industry, the scholar is not cordially invited to better the methods shown. In the educational methods of the science of management the scholar or worker is cordially invited to improve any method shown, once he has performed the task in the way assigned. Only one requirement is made, that all proposed methods shall be submitted to the impartial laboratory test of actual operation, a test which the workers in scientific management demand of themselves. I am sure that I am speaking not only for myself but for my associates when I say that it is our constant feeling that no single factor has advanced the science of management more largely than the wise suggestions of men working at the tasks that have been set. It is our feeling that the advance of scientific management is the work of many men, that the open mind ready to receive gladly all constructive suggestions is an essential to the worker in this field, and that the cooperation of the operative in advancing all methods in industry is very well worth the obtaining. Nor is that cooperation difficult to obtain. The worker who weighs the educational theories of scientific management welcomes the opportunity of cooperating with his teachers in the advancement of knowledge.

The theory of education presented here goes beyond any single course or single machine. One of the greatest barriers to permanency of employment is the unevenness of work in different departments of a factory at different periods of the year, a condition especially evident in those factories dealing with a seasonal trade. One month departments A and B are rushed and the men in departments C and D are laid off. The next month the case is reversed and the men are laid off in departments A and B while the work is rushed in departments C and D. The science of management by its studies of the relation of sales to types of product, by its increase of production and by its general advances in the conduct of industry, tends to do away with this condition, but it also works specifically against this state of affairs by offering education along the lines of

work in departments A and B to the men in departments D and C and vice versa, enabling them to gain such mastery of different parts of their trade as shall give them permanent employment in different departments and paying them higher wages for each educational advance. Nor has this opportunity for wider series resulted in the employment of less men. The advance of industry under the science of management has provided places for all.

The development of the individuality of the operative under these methods should be especially noted here. This offer of education along different lines, this attempt to develop every employee as far as possible, to leave every gate to advancement open is, of course, directly opposed to the deadening monotony of repetitive tasks so characteristic of the old type of management. It is the belief of the engineers engaged in carrying forward the science of management that the broader the outlook and capacity of the worker the greater the industrial advance and the greater the total effectiveness. It is the constant aim of the science of management to advance the interests of employer and employee alike. "Science plays no favorites."

The soundness of the educational theories of the science of management may perhaps be still further exemplified when we consider their application to a well-run department of chemistry in a technical school of the first grade. The methods used are strikingly analogous. Before determining the content of the courses to be offered, the instructors in such a department determine the general routing of the courses, deciding, for example, that industrial chemistry shall be offered the second half of the junior year and water analysis the first half of the senior year. The general routing finished, the content of the individual courses is determined, a process analogous to our collection and correlation of industrial knowledge, and, as a third step, instruction cards in the form of laboratory manuals, outlines, lesson sheets and the like are prepared. Tasks are set in approximate relation to the time allotted to each course and the necessary apparatus and material are placed in stores. The instructors in doing these things have performed the functions of route clerks, instruction card clerks and store clerks.

Once bring the student into the experimental laboratory of such a chemical department and the functional teachers may be translated bodily into laboratory instructors. The instructor who

sees at every laboratory exercise that all material and apparatus required for that given exercise are on hand and who gives directions as to the proper arrangement and setting up of apparatus exercises the functions of gang boss. The instructor who teaches the proper methods of doing the work is the speed boss or group instructor. The instructor who corrects note books and checks analyses is the inspector, while certainly the dean fulfils the office of shop disciplinarian. Records of performance, of attendance, and of marks, are clerical records performed by clerks who correspond to the cost and time clerks. The teaching of proper care in the cleaning and upkeep of individual apparatus, moreover, is a teaching function of the department of maintenance.

The thinking worker, weighing the educational methods found elsewhere with those offered by the science of management, finds in general that they compare favorably with the best advances of education in strictly educational fields. That single fact is a power toward making his attitude a favorable one. But still more powerful is the fact that the worker soon comes to recognize the open mind of the scientist engaged in this work, the constant search for better methods than any used before, the feeling of the men developing this science that its development is no individual matter but the business of many men, and that from any man they are glad to learn. From all these things the worker learns the worth of testing all things not by dogma but by the light of the best scientific method at command.

With that recognition of the open mind of science, the thinking worker comes to recognize another point—that the science of management, like the sciences of physics, chemistry and biology, all of which it calls to its aid, is a living, growing organism, constantly advancing, constantly replacing one method by a better, constantly revising, constantly bettering its mechanisms and its systems. Gradually he comes to be firm in his belief in the science that underlies all natural phenomena and in the latest science, the science of management. The workman who gains this belief becomes a powerful agent in that great task of the science of management, "The substitution of exact knowledge in industry for industrial guesswork."

What is the attitude towards scientific management of my friends, the workers at the machines, who are working under the direction of the science of management?

Cordial appreciation of the opportunities given them by that science, hearty willingness to cooperate in the development of that science, thankfulness that a freer, broader, finer life will be open to their children because the science of management has come into being.

INDUSTRIAL BETTERMENT ACTIVITIES OF THE NATIONAL METAL TRADES ASSOCIATION

BY ROBERT WUEST,
Cleveland, Ohio.

The National Metal Trades Association is an organization of national scope, composed of manufacturers of metal products who employ machinists, millwrights, boiler-makers, pattern-makers, coppersmiths, polishers and buffers. The very keynote of the principles for which the association stands is found in article 1 of its constitution, viz:

(1) "To secure and preserve equitable conditions in the workshops of members for the protection of both employer and employee.

(2) "Investigation and adjustment of questions arising between members and their employees which may come within the jurisdiction of the association."

History

In order better to understand the present position of the association, we will review briefly its history and progress and try to show to the reader the fact that its organizers "built better than they knew" when they launched the movement which resulted in the association as it is found to-day. The association was organized on August 21, 1899.

The newly-formed association's policy being one of conciliation and adjustment, a board of conciliation composed of members of the association and of officers of the International Association of Machinists was formed, who entered into an agreement which was signed by both organizations on March 31, 1900. On May 18, 1900, this board of conciliation met in New York City and adopted a working agreement, in many respects the best ever made between employers and employees.

Industrial peace, as far as members of both organizations were concerned, seemed assured and while disputes necessarily arose, they were settled by the board of conciliation. In the spring of 1901 came the first rupture, when the International Association of Machinists

presented certain demands and refused to confer with the conciliation committee of the National Metal Trades Association, but on May 20, 1901, called a country-wide strike to enforce its demands. This resulted in the formal abrogation by the National Metal Trades Association of the so-called New York agreement on June 10, 1901, at a special meeting called to consider the situation, and the adoption on June 18, 1901, of the present "Declaration of Principles" under which the organization is now working. While we can only speculate as to what might have been the results of continued bargaining between the two associations, we are justified, by the sequence of events in the history of labor organizations and particularly those with which the National Metal Trades Association has had to deal, in believing that it was providential that the break came when it did, as concessions on the part of the employers, but led to further demands with the one object in view, by the officers of the labor unions, to dominate the industrial situation and dictate terms upon which manufacturers should be permitted to do business.

Deploing the necessity of combating strikes, but impelled by the law of self-preservation to do so, the association took up the work of manning the shops of its members and getting business back to its normal channels on the basis of the open shop and opportunity for all. This was accomplished in due time and then the association entered upon a program of constructive work which is steadily growing larger and increasing in importance, looking to industrial betterment not only in the shops of its members, but throughout the whole length and breadth of the land.

The members of the National Metal Trades Association are for the most part men of ability, students of affairs, political, social and economic, men of broad sympathies and humane instincts who are helping to awaken what has been called "the public conscience," and a dominant note in the declaration of principles of the association is contained in the words taken therefrom which follow: "This association will not countenance any conditions of wages which are not just, or which will not allow a workman of average efficiency to earn at least a fair wage."

Constructive Activities

The association holds an annual convention at which the business of the old year is reviewed, and the plans laid for the coming

year's work. The officers and administrative council are elected and the various committees appointed. The administrative council, which meets twice yearly, is clothed with plenary powers to act for the association on all matters needing attention in the interim between conventions, and acts in its turn through an executive committee between its sessions.

Papers are read and discussions held at the annual meetings on subjects of importance and interest to members, resulting in an exchange of ideas and a dissemination of knowledge which is of great value to the trade in general. The social side of life is not neglected at these gatherings and many pleasant and lasting friendships are thereby formed amongst men who, under the old order of things, would conjure up pictures of each other as the personification of all that is diabolical. Certainly this is one of the many changes for the better, growing out of the modern idea of cooperation and association with one's fellows and co-laborers in the same general field.

Among the subjects with which the association has concerned itself and upon which it has spent much time and energy are: Industrial education and the training of apprentices; legislation in the states and in congress; cooperative profit-sharing plans; the publication of a periodical, first under the name of *The Open Shop*, and later in conjunction with the National Founders' Association under the name of *The Review*, for the purpose of placing before workmen subjects which are mutually advantageous to employer and employee; the fostering of the movement for greater safety, better hygienic and sanitary surroundings in shop and factory; the establishment of local employment bureaus the better to provide suitable workmen for employers and positions to fit the capabilities of employees.

Industrial Education and Apprentices

The National Metal Trades Association has always realized that the question of industrial education for boys is a serious one, and that it will grow in importance with the flight of time. One of the early efforts in this line was made through a committee of the association in connection with equipping with machinery certain buildings in the Winona Technical Institute of Indianapolis, Ind., and the furnishing of scholarships of the value of \$100 each for prospective students. The committee did very effective work in soliciting the contributions of equipment and scholarships which were made by individual

members of the association to the institute. Later the association in conjunction with Indianapolis members voted financial support to the institute for the maintenance of a metal trades department, and appointed a committee to cooperate with the officers of the institution in the management of that department.

In cooperation with the University of Cincinnati under Professor Herman Schneider, members of the National Metal Trades Association opened their shops of 1906 to the students in the university's Cooperative Course in Engineering, with the result that young men are now getting a practical and technical training which was impossible under the old order of things. That this movement is filling a long-felt want may best be judged by the reported facts that the products of this course are eagerly sought after and are being absorbed by the trade faster, in some cases, than the finishing processes are completed, and that the number of applicants for enrolment is reported many times greater than the facilities available at the university will accommodate.

It is interesting to note that the manufacturer in the metal trades is always glad to secure the services of a German machinist because of his better technical and theoretical training. The only drawback to this type, as voiced by one employer, being that after a while they seem to appreciate their superiority over the other workmen and develop a more or less annoying case of self-importance. When it is pointed out that these men are the fruit of a system which we in America are trying to inaugurate, the employer who has one of them readily sees the point and is more than ever willing to help along this type of education. The complaint has been made that the graduates of some of the higher grades of educational institutions are a little afraid of soiling their hands and clothes, or of donning a suit of overalls, indicating the advisability of extending the field of the purely trade school and providing industrial training and education for the boy who, for reasons wholly beyond his own or his parents' control, is obliged to fare forth and assist in providing the necessities of life for the family. The need for education on the part of such boys has been provided for in some instances by the organization on the part of members of the National Metal Trades Association of apprentice schools in the plant or factory of the member. Arrangements are made for a teacher and the boys are alternated in small groups between the school room and the shop. In

one instance in Cleveland, where the demand was great and no one manufacturer would undertake such a work alone, the Young Men's Christian Association was induced to take up the work of organizing and teaching, while the manufacturers, members of the National Metal Trades Association, and others, furnished scholarships of a certain value, and agreed to allow the boys opportunity in the day time to attend the classes on certain days each week. The great avidity with which boys grasped the opportunities is the most eloquent testimonial to the merits of this plan.

The great economic, social and industrial gain by the continuance of these measures can hardly be estimated. We are thereby producing better mechanics, better workmen, better citizens and better men in every conceivable respect than if this same material had been allowed to drift into the unskilled occupations, or to grow up on the street. The National Metal Trades Association by its active interest and work in this field has no doubt been the means of awakening the interest of the individual members, and thereby spreading the movement farther and farther.

Realizing, after some time, that the spread of industrial education should be in the hands of specialists, and knowing of the work of the National Association for the Promotion of Industrial Education to this end, the National Metal Trades Association, at its annual convention in 1911, appropriated money to be used in the discretion of its administrative council for advancing the work undertaken by the former. Of this amount a part was paid over to the National Association for the Promotion of Industrial Education in the autumn of 1911 and the disposition of the balance was left with the administrative council by the convention of 1912.

The National Metal Trades Association has identified itself with this movement, both as a national body and through its branches, and in addition to the instances above noted, members of the National Metal Trades Association in branch territory have lent their support to institutions which are teaching students along industrial lines. In Chicago, the Lewis Institute receives the cooperation of the association; Cincinnati's Continuation School and Cooperative High School, in addition to the university there, are training mechanics in many trades and have the members' hearty approval; Cleveland has its technical high school in the public school system in addition to the work being done by the Young Men's Christian Association

above mentioned; members in Hartford, Conn., have induced the public school authorities there to inaugurate a continuation school to which they will send their apprentices; New Haven, Conn., members have cooperated with the Boardman School there, and are trying to induce the board of education to take up the matter of industrial training for the apprentices in their shops; St. Louis, Mo., members are working with the Rankin Trade School in that city and report very gratifying progress; in fact, wherever members of the National Metal Trades Association are found, they are alive to the necessity of education for the American boy of a sort to fit him for his life work, thus increasing our national industrial efficiency and enabling our country to hold its own in the markets of the world with those nations who long since saw the advantages of the system we are trying to upbuild, and who are and have for some time been reaping the golden harvest from their wisdom and foresight. Well-trained apprentices are already going from the shops and factories of members of the National Metal Trades Association to the ranks of the mechanics of the country, making for industrial betterment of the whole nation as a result of the efforts of the association to spread the new gospel of industrial education.

In the course of his training under the new system, the apprentice will acquire a fair knowledge of economics and will be better able to appreciate the fact that his employer has problems which perplex him and that he is not a "machine for raising wages," to borrow an expression from one of our members.

This will tend to make for industrial peace, as from his broader mental horizon the mechanic will be able to appreciate some of the difficulties of the manufacturer and this will cause him to temper with reason his demands upon his employer.

Cooperative Profit-Sharing Plans

The National Metal Trades Association has always advocated the payment by its members of the highest rate of wages possible in the locality in which the manufacturer finds himself. Wages being a purely local question, the fixing of rates of wages is left to the localities affected and is a matter in which the association takes no part.

Profit-sharing plans have been discussed at annual conventions of the association and are in use amongst the members.

One of these is Crane Company's well known plan of an annual distribution amongst their employees of a certain percentage of the earnings of each man for the past year. The payment is made about Christmas time and is known as a "Christmas present." A man discharged for cause, or leaving of his own accord, forfeits his share, while one who is away without fault is entitled to participate *pro rata*. Another plan contemplates first, the payment of a given dividend on the investment of the manufacturer out of the profits, and of what remains an agreed division is made between the company and its employees. Other plans are based on the purchase by the employee of stock in the employing company to be paid for by instalments out of dividends or wages.

The payment of a bonus, or a premium, as distinguished from the old piece-work system, for work done over and above an agreed amount, gives the workmen of exceptional ability an incentive to increase his earnings by steady and consistent work, and this plan is in use in a great many members' shops and factories. It leads to suggestions for shortening the time in which operations can be done and for improvement in equipment.

A plan of paying to the workmen a reward for inventions which are patentable and improvements which are valuable, although not patentable, encourages employees to use their brains for industrial betterment, and is in use in some members' plants.

We believe that a profit-sharing plan put in operation tends to decrease the possibility of industrial disturbance, encourages thrift on the part of employees and gives them an interest in the operation of the plant which is otherwise wanting.

Mr. N. O. Nelson, of the N. O. Nelson Manufacturing Company, of St. Louis, Mo., expressed it well when he said: "Profit-sharing is a peace measure but it is not a guarantee against strikes. There can still be differences, but they will be rare. There are still the class influences but they are weakened. For these reasons, profit-sharing is not favorably regarded by union leaders."

Safety Appliances, Hygiene and Sanitation

The National Metal Trades Association has consistently taken the position that the first step in the plan of compensation for industrial accidents is the prevention of accidents. The question of greater safety in the shops of the members has been discussed at each annual convention for years, and the association has tried in many ways to

interest its individual members in reducing to a minimum the number of mishaps in their plants. In furtherance of this plan a man who has made the matter a subject of considerable study, being a mechanic of great ability, was appointed safety inspector of the association, and was given the task of inspecting the shops of members, with a view to pointing out to those in charge the danger spots of the plants, and to suggest the remedy to be applied. The employers were a unit in the cordial reception of the plan, and many letters were received asking that the inspector be hurried along as soon as possible. The officials of the plants that were well protected seemed equally anxious with those who theretofore had perhaps given the matter only casual thought to receive suggestions to increase the safety of their equipment. Singularly enough, the employees who were to be directly benefited were oftentimes the reverse of enthusiastic over the necessary changes, and a campaign of education on the subject became necessary. A safety device was often looked upon as a reflection on the workman's skill. Lectures and talks, illustrated by lantern slides, have been and are being given by the association's safety inspector to groups of workmen and employers, to classes of students and apprentices, and wherever interest in the subject has been displayed. The association makes no charge for these lectures beyond the necessary traveling expenses of the inspector. If the inspector happens to be in the neighborhood of the proposed gathering there is no expense in connection therewith.

Another step in advancing the safety idea was taken by the association when it published a pamphlet on "Safety Appliances." The object was to place before members and others interested a convenient list of devices for the prevention of industrial accidents.

The subjects of hygienic and sanitary surroundings for employees have been discussed and constantly called to the attention of members, as there can be no doubt that a pleasant place in which to work adds to the efficiency of the workman, although employers in this day are humane enough to provide these things on other than a sordid basis.

That the efforts of the association in this field have resulted in improved conditions throughout the trade, and will continue to produce results far beyond the cost of the work, cannot be doubted. The ultimate saving in dollars and cents whether under employers' liability and compensation acts or under the casualty insurance policy plan should be considerable. This is, in our opinion, one of the most important activities of the association for industrial

betterment and tends to cut to the irreducible minimum the list of casualties in the industry.

Systematic Compensation for Industrial Accidents

A subject which is closely allied to that of safety is compensation to the victims of industrial accidents. The enormous toll of life and limb which has been taken by the industrial world in the past is simply appalling, and the National Metal Trades Association early in its history took steps to reduce it to the minimum beyond which accidents seem to be inevitable, and for these it early took the position that the old common law basis of fault as a ground for recovery or defense, as the case might be, was ill-suited to the conditions of our times. This common law doctrine grew up when individual effort and undertaking were largely the order of the day and vast aggregations of capital and the use of machinery by considerable number of workmen were things unknown. It was early recognized that the burden of inevitable accidents should be carried, not wholly by the victim and his dependents, but in part, at least, by the industry responsible for them so that the cost could be in turn charged to the consumer. When this subject was first broached in the annual conventions of the association, its members, like all other employers, were somewhat in the dark as to what plan to pursue, but a committee was appointed and has been continuously kept at work to keep the members informed, and to work for uniform provisions throughout the country. The movement gathered headway very rapidly until to-day a large number of the states have legislated for a systematic compensation for industrial accidents and the congress of the United States has before it a bill applicable to the railroads of the country doing an interstate business.

We believe that this tendency to place the burden where it belongs is a great step in industrial betterment, that it will tend to maintain peace in industrial pursuits, and eliminate the feelings of hostility and hatred engendered by the old system of the damage suit based on negligence.

Legislation

The National Metal Trades Association at all times takes a lively interest in legislative matters. It has worked for the enactment of laws having for their object the better protection and development of American manufactures, and it has opposed legis-

lation which was thought to be inimical to the best interests of the nation as a whole, recognizing the fact that legislation which will injure the workman will also injure the employer, and *vice versa*. The association has never acted in any way as an obstructionist, but has freely lent its help and influence to the passage of useful legislation whenever possible. A recent instance of this was the resolution passed at its annual convention endorsing the so-called "Page bill," which seeks to provide federal aid for the furtherance of education in industrial and household arts and agricultural training for the young people of the nation. At the time when frequent dynamite outrages were attracting the attention of the country, the association took action upon the subject at one of its annual conventions by instructing its administrative council to investigate the question of a regulation of the manufacture and sale of high explosives. This resulted in the drafting of a bill as a basis for legislation in the states, which it is thought would serve to make it very difficult, if not impossible, for law-breakers to obtain explosives unless they stole them, but would not interfere with the possession for a legal purpose of any quantity of the substance. Many other specific instances of the interest of the association in such matters could be cited. Intelligent interest in the pending legislation by the citizen is always desirable, and such interest by members of an organization in subjects peculiarly within its field of operations can but make, we believe, for industrial improvement and betterment generally.

Extension of Transportation Facilities

The National Metal Trades Association has gone on record at its annual conventions as favoring intelligent extension with some of the old-time vigor and courage exhibited in planning for expected future traffic demand of railroad facilities in place of the ultra-conservative attitude exhibited lately by the common carriers of the country. This shows a realization that transportation facilities make for industrial progress and betterment both in the locality served and the country at large.

"The Review"

In order to help the workmen to understand better the economic problems which confront the country, the National Metal Trades

Association, in conjunction with the National Founders' Association, publishes a monthly magazine known as *The Review*. This magazine addresses itself to live questions which will interest men who work in foundries, factories and machine shops, and disseminates information as to the trades in question which serves to educate the workmen. The man who has some knowledge of such questions is better able to appreciate the fact the employers must produce wealth before it can be disbursed, and that the employment of capital as well as labor is necessary in any industrial enterprise. *The Review* is sent on request to anyone sufficiently interested to write for copies, or ask that their name be entered upon the mailing list. Large numbers of workmen in foundries, factories and machine shops take advantage of this fact, and the material laid before them is usually of a high order. This can but reduce the tendency to industrial war, for if a man is acquainted with both sides of a situation he is less likely to rush into strife than if he has but his own point of view.

Local Branches and Employment Bureaus

In the constitution of the National Metal Trades Association a system of local branches is provided for, each with its set of officers, including a paid secretary who has charge of the active work of the branch. In connection with each branch an employment bureau is maintained which serves as a clearing house for the members of the association in branch territory from which to procure their labor supply. The operation of the bureau is not confined to the so-called trades, but men who are seeking executive and other positions in connection with the metal trades are encouraged to make use of the bureau to obtain them. No discrimination is made against workmen whether affiliated with unions or not, the sole requirement being that, if a union man, he must agree to work peaceably side by side with his fellow workman without reference to the question of his being union or non-union. The bureau serves as a place to which a man may report his unemployment as soon as he is out of work. The results of the workings of these bureaus have been that a minimum of effort has been expended on the part of the employer and employee in coming together, and a very high class of workmen has been procured for the shops of members, while employees are encouraged to look for promotion through the bureaus as well as in the shops.

This, we think, is one of the greatest activities of the association which tend to industrial peace and betterment.

Conclusion

In reviewing the history of the association and looking into the future, we are well justified in believing with the president of our association for 1911, Mr. F. C. Caldwell, that "the problems which we, as an association, have been endeavoring to solve are just as serious and just as important to the welfare of the country as any of the political problems that are now engaging our attention. If we are right in our contentions, and we are certainly sincere in believing that we are right, our efforts in endeavoring to maintain the principles of this association are just as patriotic and just as beneficial to the welfare not only of our industry but also the country at large, as the benefits that accrue from the right settlement of any great public question."

INDUSTRIAL PEACE ACTIVITIES OF THE NATIONAL ELECTRIC LIGHT ASSOCIATION

BY ARTHUR WILLIAMS.

No great industry of this country, probably, has been freer from labor troubles throughout its career than that represented by the National Electric Light Association. It should not be understood, therefore, from the title of this article, that the present activities of the association in the field of labor have in mind only the securing or continuance of industrial peace. Rather is the object to provide for the workers of the industry that which, within the scope of modern methods and enlightened public opinion, may be considered a larger measure of industrial justice or compensation. Such measures, it is believed, will insure not only the continuance of the present conditions, but greatly enhanced efficiencies and economies in the service of labor.

Changed Industrial Conditions Affecting Labor

During the past decade, perhaps largely because of bringing electricity into the industrial world, the conditions affecting human labor, individually and collectively, have undergone radical change. Thus to-day men are working in larger groups, at higher speeds and at greater distances from, or under conditions which put them entirely out of touch with, their employers. There is the substitution of machine for human skill, eliminating industrial education, and, in our great manufacturing centers, the human element has been organized and is conducted with machine-like precision. The individual has been subordinated, or elevated, to the average of the whole.

Another unfavorable condition has arisen in the industrial treatment of injured workers or, in the event of fatal accident, of their dependents. As a rule, probably with few exceptions, the employer carries industrial accident insurance under which he is relieved of financial loss in the event of accidents occurring, and his employee finds it very difficult, if not absolutely impossible, to recover compensation from the insurance companies. Their prin-

cial, if not sole, interest is to pay as little to the injured workman, or to his dependents, as practicable; on one theory or another, supported by legislation or the common law in most, if not all, of our states, the burden of proof of negligence has rested upon the workman. Against this he has been compelled to fight almost overwhelming odds in splendid legal talent and the efficient organizations necessarily maintained by many of the liability companies.

In the meantime, the broken worker finds himself without support, and, with added expenses, facing a merciless deprivation for himself and those dependent upon him; or if the accident be fatal, his dependents must rely upon the charity of friends or of the community. Can it be other than expected that these conditions, affecting millions of our workers, have created an intense hostility, conscious and sub-conscious, not only among those directly affected, but among all related to them? Their fellow workers realize that were they the ones upon whom the injury had fallen, the same crushing effect would come to them and to their families. Is anything needed more automatic or certain to create industrial unrest and class-hatred than conditions such as these?

Responsibility is not to be placed upon the employers alone. It is one result of the growth and changes in modern industry, for which an adequate cure is only now in the process of application. A cause must precede a cure, the discovery of which is often very difficult. Only the strongest employers can afford to carry the human life risk of their industry. A single accident to a small employer would throw him into bankruptcy. The difficulty is that employers have not realized the responsibility resting upon them toward those upon whom they depend for labor, nor the comparatively insignificant cost of providing adequately for any injured worker or his dependents, provided the burden is spread over the industry as a whole.

A tax of as little as one cent a ton on the coal mined in the United States during the past five years would have been sufficient to provide an indemnity fund of more than \$2,000 for the dependents of every miner killed in the course of his work. Five cents a ton added to the selling price would provide an indemnity fund of \$10,000. These figures illustrate the cheapness with which adequate compensation can be provided.

The important change to be made is that employers shall not

purchase the kind of insurance which gives the companies providing it any chance of evading payment. Rather should they purchase insurance which corresponds with fire insurance placed upon property, under which a fair and adequate compensation shall be paid, sufficient to restore the injured to health, or to make up for lessened earning power, or to protect dependents from extreme poverty. As with fire losses, so here the insurance companies should pay the loss, whatever it may be, with the element of speculation or chance absolutely eliminated.

Favorable Labor Conditions in the Electrical Industry

In some phases of its employee relations the electrical industry differs from many of the other organized industries of the country. It has the advantage of being comparatively new, and has spread into hundreds, if not thousands, of fields of public usefulness with remarkably rapid strides. Opportunities, therefore, have been constantly opened up on every hand for everyone with the slightest degree of ambition and ability. The work, study and experience of to-day serve as stepping-stones to something better to-morrow. There are no closed doors.

Another element of advantage in the labor relationship is found in the fact that to at least a very large extent the men holding the higher positions have risen to them from the ranks below. Some found their chance in the clerical departments, others in construction, still others in the boiler and engine rooms of the power plants. Many of the workers began in the lowest positions, paying the smallest wages, oftentimes, because of the difficulties of starting a new enterprise averaging less than those of corresponding positions in other industries.

The men in control of the operation of these plants, for the most part, have a training which permits them to feel and consider sympathetically the needs and opinions of those holding subordinate positions. Not always able, perhaps, to meet their subordinates' views regarding remuneration and other questions, they are yet uniformly of a mind to enter into friendly discussion in such a manner that disappointment is lessened and bitterness is removed.

Perhaps a third and no less important consideration is found in the personal contact between the workmen and the management of electrical properties. There is practically no "absentee management." The men in charge of the plants are directly representative

of the owners in every important sense; frequently they are part owners themselves. Many believe that absentee ownership and management, thus placing these two elements out of touch with labor, lie at the foundation of much of the industrial unrest existing here and in Europe.

Furthermore, this is an industry where skilled labor is absolutely essential to the satisfactory and successful operation of the power plants and the attendant features of the electrical systems through which service is rendered the consumer. While it is an industry in which the machine is relied upon for quality of service, for capacity of plant and for economy of operation, the skill of the individual worker, in whatever field he may be engaged, is still of paramount importance. Thus in the modern central station the fireman of to-day must be a better fireman than in the days before invention began to enter upon the field of human skill. The engineer must be at least equally as competent as the engineer of other days, and, further, he must be able to assume a larger degree of personal responsibility in the care and operation of the great electrical units placed in his charge. The men in control of the electrical departments must have added rather than lessened personal training, must be of sound judgment, quick and reliable in action, and calm and collected under stress of emergency. These are man, not machine, qualities.

And so on through all of the successive steps in the organization. With the growth of the machine, with invention and science in the electrical industry, the man has had to grow in keeping; he has developed up and not down; his ambitions and ideals have been sustained and gratified; all that is best within him has had opportunity to develop to a degree measured only by his own capacity for development.

Present Activities not a Sudden Impulse

The present activities of the association in the field of human labor are not the result of any sudden impulse or change in policy, nor of the social and political questions of the day. These activities had their beginning years back in a spontaneous desire to improve the condition of labor, so far as it could be improved within the industry, rather than to meet any emergency arising through past neglect in this respect. The life of the association goes back more than twenty-five years, and it now has a membership in excess of 12,000.

Of this number more than 1,100 members are central station companies supplying the public with electric light, heat and power, and more than 10,000 are their employees in good standing. The membership of the employees is intended and permitted that they may have the educational advantages of the publications of the association and of attending the various conventions conducted under its auspices. The constant aim and effort of this association has always been of a constructive and educational nature.

The activities of the association may perhaps be divided into four successive cycles or periods. The first would naturally relate to technical matters with reference to the construction and operation of its power plants. The second period was that in which the association's activities were directed toward the development of a wider field of usefulness in the supply of electric current and the obtaining of men having ideals and training in keeping with the high technical development of the men found in the other departments of the industry.

The third distinctive period may be said to be that in which the association began to appreciate the larger measure of responsibility, through the growing change in public opinion, resting upon its members in the conduct of its relations with the public at large. Emphasis was placed upon the careful observance of all state and municipal ordinances, the support of legislative effort toward fair regulation and the supply of satisfactory service at a fair price. To all of these things the members responded quickly and gladly, and we find to-day everywhere the representatives of the electrical industry endeavoring to associate themselves with all that is best in the welfare and general development of the municipalities they are engaged in serving.

The larger interest in human labor, the subject of this paper and to which reference has been made, may be described as the fourth period in the development of the association. It represents an effort to recognize, in some proper and lasting manner, such obligations as may exist to the men and women in the service of the industry and upon whom its best development and continued and satisfactory service to the public may be said to rest.

The Association's Method of Investigation

Various phases of labor questions have been studied by a special committee of the association, called the public policy committee.

This committee is composed of many of the most prominent men in the industry, who, almost without exception, are in executive control of its larger properties. After several years of study and a series of meetings lasting through an entire year, this committee presented a report on the subject of labor before the 1911 convention of the association held in New York City. The importance of the subject and the size of the prospective gathering led to the use of the new theatre, which, notwithstanding one of the most inclement evenings of the season, was crowded from floor to ceiling, such was the intense public interest in the subject.

The most direct way of conveying the views of the association upon the subject of labor, as expressed in the unanimous adoption of this report, will be through the citation of parts of the report itself. Upon the value of labor, the committee reported as follows:

Undoubtedly modern industry on a large scale depends upon three factors: (a) Capital; (b) Direction, executive and administrative; and (c) Labor. All combined and working in harmony are so essential that a partial or dwarfed interest in any one factor would invite absolute failure, or at best make possible only partial success. Neither the interest of capital nor that of direction has been considered by your committee, excepting in so far as either is conserved by an equitable interest in the welfare of labor. Nor have we attempted to pass upon the question of wages, other than to express the belief that in the same locality they should be fully equal to those paid by any other employer engaged in similar work. Wages are a local and independent question, and in this respect, so far as our knowledge goes, the employees of our industry are treated very generously.

The principal questions, of a number, to which the committee gave consideration, in endeavoring to pass adequately upon the subject, follow—again quoting from the report in question:

(a) Are our employees, individually or collectively, receiving all of the results of their labor to which they may be properly entitled?

(b) Are they adequately compensated in the event of industrial sickness or accident? Do we appreciate and fairly assume the responsibility, moral if not technical, sometimes resting upon us to restore an injured employee to health, or in the event of a fatal accident to provide adequately for his dependents?

(c) Do we take sufficient interest in the welfare of our employees when, owing to conditions beyond their control, such as serious sickness, they are in distress and possibly subjected to want and deprivation?

(d) Are there any available means other than those now employed by which the efficiency of labor can be fairly increased?

(e) Can the differences between labor and capital be lessened or removed without decreasing the efficiency of labor?

From the nature of the report presented by the committee, and, as stated, unanimously adopted by the association, it was the judgment of the committee that more could be rightly done in the interest of labor than is done in the usual payment of the daily or weekly wage. Clearly was the committee of the opinion that, while the ends of justice would be served in a more adequate provision for labor, an element of compensation to the employers themselves might be fairly expected in the improved character of service that labor would undoubtedly give in return. Instead of close bargaining and an individual and collective determination to render as little service as practicable for the highest possible wage, indifference in regard to the service rendered by fellow employees, lack of care of materials and tools, there would be substituted that character of service which leads not only to the best that the individual has in him, but which inspires all others working around him to render a like service; contentment, good-will and enthusiasm, constant and careful study of the interests of the employer, watchfulness over tools and materials, and a larger and more agreeable measure of personal care of the public, where the service is such that the employees are brought in contact with the public, all making for the highest efficiency.

The point which is emphasized here is that these added arrangements promise to have very important mutual advantages for employers as well as for the employed. They are not to be considered one-sided in which labor, receiving larger and more adequate compensation, would be the sole beneficiary, but that the employer would receive not only service of this better character, but would be introducing measures looking to the general elevation and good-will and contentment of labor, contrasted with the conditions which are to-day found over the industrial world.

With the question of wages adequately cared for, in all instances being enough to insure good health and efficiency, the committee felt that the members of the association might rightly adopt three additional forms of relationship, without asking contributions on the part of the beneficiaries. It was emphasized that our industrial workers want neither philanthropy nor charity, and that any relationship of this kind must be established only in the sense of providing an earned compensation, not a gift on the part of the employer for something his employees have not earned.

These additional elements of compensation to be provided by the employers are as follows:

(a) Full and adequate compensation to the injured workman or his dependents in the event of industrial accident.

(b) "Service annuities," based upon the period and value of the service rendered, after reaching a proper retiring age.

(c) The sharing of profits with all employees who, by the character of their service, have earned a share.

Accident Compensation

In reference to compensation for industrial accidents, the report states:

Your committee believes that the cost of all accidents inherent to our industry should fall not upon the individual employee or his dependents, but upon the industry as a whole. It, therefore, recommends:

(a) That when an accident occurs which is clearly without deliberate misconduct, gross carelessness or reckless disregard of consequences on the part of the employee, the entire cost should be borne by his employer, who should assume full responsibility for restoring the injured employee to health as rapidly as possible.

(b) That full wages should be continued during illness and convalescence for a period of six months, and at the expiration of six months the wages should be continued at one-half the full wages, for life or during disability, unless the "service annuity" to which the employee would be entitled in case of retirement should exceed one-half the wages, in which case the employee would be entitled to the "service annuity."

(c) That in the event of partial disability proportional payments should be made to make up, either wholly or partly, the employee's decreased earning capacity, if there be any.

(d) That in the event of death from accident within the service the payment to which the employee would be entitled in the event of total disability shall be continued:

(1) To his dependents, should there be any, during the employee's expectation of life, under the assumptions of the American Experience Table of Mortality, or

(2) Until a widow should again marry, or dependent children reach the age of sixteen years, or to other dependents such as a father or mother while they live, with such other provisions as may be applicable in individual cases, but in no event to exceed the deceased's expectation of life, under the experience table.

"Pensions," or Rather "Service Annuities"

During its deliberations, the committee came to the conclusion that the term "pension" was inadequate or subject to wrong interpretation. It, therefore, adopted as a substitute term "service annuity" as conveying the idea that the retired worker was by this means receiving compensation for a definite service that he had ren-

dered during his term of employment, but which could not be included in his daily or weekly wage. This was intended as compensation for continuous as well as satisfactory service, and the specific recommendations of the committee are found in the following quotation:

Your committee is of the opinion that our member-companies should provide a service annuity for every permanent male employee who reaches the age of sixty-five years, and for every female employee of sixty years, having a continuous and satisfactory record of ten years of service. In this connection, we desire to offer the following recommendations:

(a) That the entire cost of service annuities should be contributed by the company as part of the annual cost of labor.

(b) That this is to be the compensation to which the employee is entitled, in addition to his wages, for rendering *continuous* and satisfactory service throughout his term of employment.

(c) Should the continuity of the term be broken by the employee of his own volition, the obligation to pay the service annuity would cease. The term, both in reference to the minimum period at which the service annuity can begin and the percentage upon which the amount shall be based, must then begin with renewed or reinstated service.

(d) The possible exception to this rule is where employees are laid off temporarily through no fault of their own. Your committee suggests that if this is done by the company, an employee's service, when not less than nine months yearly, shall be treated additively in determining the service annuity.

Likewise, it is suggested that if employees are temporarily laid off because, say, of the destruction of the power plant, or for similar cause, this should not be considered as an interruption in the continuity of service.

The point is emphasized that the service of the employee is discontinued through no fault of his own, but for economic reasons within the company.

(e) That any employee having a minimum record of ten years of *continuous* and satisfactory service, and who in the opinion of the company has become unfitted for duty, may be retired at any age and given a service annuity; that any such employee may make application for retirement, or that the recommendation may be made by his employing officer.

(f) The suggested basis of service annuities is from one to two per cent of the yearly wages, as may be adopted by the company, for each year of *continuous* service, based upon the employee's wages during the highest ten consecutive years of employment.

Profit Sharing

The third of these recommendations is that the principle of profit sharing should be adopted. This is the most advanced and important of the three, and, where adopted in accordance with the recommendations of the committee, has been found to lead to very

satisfactory results. The section of the report bearing upon this subject is quoted in full:

The adoption of the principle of profit sharing by our members is offered as a means for establishing closer, more efficient and more satisfactory relations with our employees.

The following suggestions are offered:

(a) That the justification for profit sharing is to secure and pay for service of fidelity and efficiency.

(b) That the object is to secure *partner* instead of *employee* service; to have our fellow workers *partners* instead of *employees*, in the accepted sense of the term.

(c) That the compensation paid to employees in the form of *profit sharing* should be considered no part of the ordinary wage schedule.

(d) That ordinarily profit sharing should preferably not be paid immediately in cash; local conditions may control this general rule, and at times special reasons may make payments in cash desirable, as for example:

(1) The purchase of a home.

(2) Special circumstances which, in the judgment of those in control of the matter, justify cash payments.

(e) That preferably the profits of the employee should reach him in the securities of the company; or in the case of a subordinate company, the securities of the parent company.

(f) That securities for distribution, in other than special instances, should be secured at the best terms and wherever obtainable; employee security holders would necessarily bear any reduction and receive the benefit of any advance in values or the rate of income paid.

(g) That dividends upon securities acquired through profit sharing should be paid in cash in the manner customary to other security holders, and available for any purpose desired by the recipient.

(h) Your committee emphasizes that one object of profit sharing is to have every employee also an *owner*. If he does not receive securities, this ownership interest may not follow; or if, after receiving the securities, he sells them his lasting interest is not secured.

(i) Your committee recognizes that this feature of its plan calls for the largest contribution required in this movement; on the other hand, the economic results promise to be most important and satisfactory in

(1) More efficient and permanent service;

(2) A tendency greatly to improve the relations between the companies and their employees;

(3) The creation of a large number of security holders from the body of employees who will thus have a double interest in the welfare and success of the property.

(j) In the distribution of the results of profit sharing, your committee desires to impartially suggest two plans, leaving the adoption of either to the judgment of the individual member:

(1) Restricting the sharing of profits to employees who, in the judgment of

those to whom they are subordinate, render specially efficient service. This means that those who are to become participants in profit sharing must be carefully selected from year to year from the employee forces:

(2) Sharing profits alike with all employees having a minimum period of service, say, of one or two full calendar years, excepting under very special circumstances.

(k) Some favor giving at once the maximum amount to all who are entitled to it; others favor increasing the amount with the service, giving the maximum only after several years have elapsed. The latter method places an added premium upon long service, but between the two methods, the committee makes no recommendation, believing that this is a local matter.

(l) Your committee believes that in sharing profits with employees a dividend should be declared annually which bears a fair relation to the income paid to the security holders; we believe that there should be definite relation between the securities and the labor dividend,

Conclusion

While this report was presented to and adopted by the electrical industry of our country, as represented in the membership of the association, the principles laid down are equally applicable to every branch of organized industry. It is especially significant that an industry so favorably situated as this one, in reference to the question of labor, should have considered the matter so thoroughly, and, as a result, should have taken a position so far in advance of any other organized movement of the times. The conclusions and recommendations of the report undoubtedly blaze a trail or open a pathway to a new industrialism, having restored to it that which has been taken away, perhaps in greater measure, and those through whom the restoring is accomplished will in turn receive benefits far in excess of their highest expectations. It is devoutly hoped that this spirit of justice, of progress and of fair dealing will become an inherent part in our national industrial life.

A PROMISING VENTURE IN INDUSTRIAL PARTNERSHIP

BY ROBERT F. FOERSTER,
Harvard University.

Though not yet tested by years of experience, the industrial partnership scheme of the Dennison Manufacturing Company, of Massachusetts, bears the marks of successful coping with baffling industrial problems. It is not a measure to purchase peace merely. It is not in any usual sense a measure to promote efficiency. Nor does it offer a substitute for normal wages. It aims, first of all, to secure the permanency of a successful business, and it employs to this end a method which, for the time and in the long run, should make for both peace and efficiency. It has distinct limitations, accepted from the desire to avoid defects everywhere arising in profit-sharing plans. But it will be regarded as unphilanthropic only by persons who do not hold that good industrial management prolonged over indefinite years is genuinely philanthropic.

In the first instance the problem which the Dennison Company is trying to solve is a business man's and investor's problem. And it is surely a universal problem. It arises in a new and resourceful country like the United States quite as inevitably as in old countries. Its essentials are clearly and simply stated by Marshall: "It would therefore at first sight seem likely," he says, "that business men should constitute a sort of caste, . . . founding hereditary dynasties, which should rule certain branches of trade for many generations together. But the actual state of things is very different. For when a man has got together a great business, his descendants often fail, in spite of their great advantages, to develop the high abilities and the special turn of mind and temperament required for carrying it on with equal success. . . . For a time indeed all may go well. . . . But when a full generation has passed, when the old traditions are no longer a safe guide, and when the bonds that held together the old staff have been dissolved, then the business almost invariably falls to pieces unless it is practically handed

over to the management of new men who have meanwhile risen to partnership in the firm. . . . But in most cases his descendants arrive at this result by a shorter route. . . . They sell the business to private persons or a joint-stock company; or they become sleeping partners in it; . . . in either case the active control over their capital falls chiefly into the hands of new men."¹

For the good of the workmen and their employers and for the good of the purchasing community, it is desirable that the "new men" who continue a business should be experienced, successful and active managers. Whence will they come? Industrial history is strewn with cases in which the whole body of workmen have been admitted to joint management; but so rarely have they been successful that their chroniclers find it necessary to invoke special explanations of success, and generally it is easier, with Marshall, to explain failure. The development of the last half century has been different: shareholders in corporations have become the managers of industry. Those who praise most the limited liability organization of industry, resting upon the issue of shares that are sold on the stock exchanges, do not deny that tangible imperfections exist in this modern system. A magnificent opportunity to attract capital from every corner of the land has been developed, and great mobility of capital has followed. But the evil of irresponsible absentee ownership is only beginning to be appreciated. The stock exchanges are a happy hunting-ground for persons whose first interest it is to secure control of corporations, to play with accounts so as to publish large earnings or grievous deficits, to boost dividends and stock prices, and in due time to let confiding "widows and orphans" elect directors. Even when such procedures, and they are legal enough, do not occur, it remains true that most stockholders know little of their business and vote blindly. Not often is it much to their credit if the corporation prospers and pays large dividends.

Meanwhile the employees of the corporation, high and low, can do nothing to prevent destructive management by outsiders. And their extra efforts and care may redound to the advantage of professional gamblers, mere lucky or shrewd inactive purchasers of stock or the passive heirs of the deceased founder. Small wonder if workmen fail to vaunt the dignity of labor and hesitate to do their best.

Somewhere within the ranks of the employees of a great company

¹ Marshall, *Principles of Economics*, pp. 379-380.

are surely to be found most of the men who, as the world goes to-day, are best schooled and qualified to run it. The tests of their fitness, the tests of the fitness of all men in the company, are not tests that outsiders can with unerring sureness apply. And if in truth management is a function exercised not merely by one man or a board of directors with reference to the whole company, but by many men and at countless points, with reference to the divisions and departments within the company, then it may be a measure of justice to distribute some part of the rewards of management to all the managers. Such an application of justice may at the same time insure excellence of management. Let us see who these managers, not generally so classified, are.

At some point in the scale of remuneration of every large company occurs a natural division of the workers into two groups. Below the point are those workers whose labor is mainly of a routine character. By special care or effort they can save from their own time or energy or material. They can turn out the same product in fewer hours, or with less effort, or with less waste of materials or power. The problem of their remuneration is essentially one of paying wages in proportion to output, and that problem is perhaps best met at present by some safeguarded variety of piece wage.

Above this group are those workmen who can exercise imagination, often enough men promoted for their fitness from the lower group. They have initiative, they originate. They are men who can think calmly and clearly of two things at once. They can by mechanical rearrangement secure real economies, economies independent of extra strain by workmen. They can exercise discretion in buying materials or selling finished product, and by their understanding of a complicated situation may exercise their discretion wisely and profitably. For their success they are further promoted in position or salary. From the most successful of them the higher officers and the directors of the company are naturally chosen. Since increased profits of the company are so intimately dependent on the energies of the entire active managing body, and not on stockholders who send proxies or have an otherwise external relation, should not the entire increase of profits of the company go to these men? That they should, and that thereby the finest *morale* of the company may be preserved and indefinitely continued, has been the belief of the re-incorporators of the Dennison Company.

The stockholders of the old company became under the new the owners of first preferred stock to the amount of \$4,500,000, on which a cumulative dividend at the rate of eight per cent is due. Provision is made for the issue of second preferred stock in series, each series having an unchangeable rate of dividend not less than four per cent. The circumstances of the issue of this stock are stated below. After dividends on the first and second preferred stocks have been paid, there will be deducted annually from the remaining net profits five per cent of the remainder for the purpose of buying in shares of first preferred stock upon favorable occasion.

An issue of industrial partnership stock to the amount of \$1,050,000 is authorized. Such stock may be owned only by so-called principal employees, the group already described. They are persons who in the previous year have received for their labors (a) \$1,200 or over and been seven years in service; (b) \$1,500 and six years in service; (c) \$1,800 and five years. Such principal employees receive shares of industrial partnership stock in a number proportional to their wages. Stock shall not be issued for cash, but shall represent profits of the company, and therefore be distributed without special charge to those whose peculiar efforts are chiefly, in the long run, the means of securing the profits. But no new issue of industrial partnership stock shall take place until a five per cent cash dividend has been paid on the outstanding industrial partnership stock. To insure the frequent, probably annual, issue of such stock, no cash dividend upon it shall ever exceed twenty per cent in one year.

A crucial question in this connection is, how shall the issues of industrial partnership stock be apportioned? Certainly by no human device can the final profits of a complex business be perfectly ascribed to individual workmen composing the business. Yet a working approximation seems not impossible. In the salaries that men get there is a kind of index to their comparative values to the business; no perfect index again, yet one that results from the best available discernment. Let him whose salary is twice that of another, receive twice the other's allotment of stock. Industrial partnership stock is issued in \$10 denominations, so that many gradations of amount may be adequately expressed.

Where ordinary remuneration is the basis of issues of new stock, there appears an incentive for each man to make himself worth more in the daily execution of his tasks and so to qualify himself for another

position which would bring not only a higher salary, but, correspondingly, a more liberal allotment of stock.

Only active workmen still in service may be holders of industrial partnership stock. That is partly because of arrangements as to voting, presently to be described, but chiefly in order that future increments of profit may be divided only among those who may be regarded as responsible for them. Hence in case an employee leaves the company or dies, his stock may either be purchased by the company for cash or converted by the company into second preferred stock paying an unvarying rate of dividend and never receiving an allotment of new stock. So the retiring employee may receive and, as the case may be, may bequeath to others a capital amount representing his saved earnings, but he may not transmit a claim to increased future profits which he and his descendants have not helped to create. At the option of the company cash may be paid, instead of second preferred stock, to the retiring owner of industrial partnership stock.

What this arrangement implies when read in the light of the position and destiny of the preferred stocks is the most interesting part of the Dennison scheme. In all probability a considerable amount of industrial partnership stock will be issued, but it may be some years before \$1,000,000 will be outstanding. Until that date arrives, stockholders of all classes will vote according to the capital value of their shares, the holder of one share of first preferred stock, par \$100, and the holder of ten shares of industrial partnership stock, par \$10, will each have in so far one vote. The larger the amount of industrial partnership stock, the safer will be the return on the preferred stocks. When \$1,000,000 of industrial partnership stock is outstanding, the preferred stocks will have sufficient safety no longer to require a vote. Then their holders will cease to vote and the entire management of the concern will fall to the principal employees. These are the persons most fit to manage, the persons who have risen from the lower places, the persons qualified by proved ability and experience to manage the business. Hitherto they have been merely employees, and though performing some of the functions of managers, have not had corresponding authority and privileges in the conduct of the business. Henceforth, as part owners of the business, with an income, above wages, that is large or small according to the character of their management, they will have enough at stake

to be trusted as sole managers. Should they fail in their task, reducing, and then maintaining for some time, the dividends of the preferred stocks below the stipulated rates, then the preferred stockholders may resume the management, to retain it until the rates are restored. But for an extended period of inability to pay preferred dividends, such a period as proves that the assets behind the industrial partnership stock have disappeared, the first preferred stockholders shall take over and permanently retain the voting power.

Such collapse seems unlikely. Provisions for redeeming in cash the stock of persons leaving the business, and for buying in shares of the first preferred stock, should prevent the burden of fixed dividend charges from becoming excessive. Also, the checks upon the dividend rate of the industrial partnership stock should lead to a large increase in the outstanding amount of this more variable security. Having lost their vote, the preferred stockholders would become akin to bond creditors. The business would more and more approach the form of a pure industrial partnership. The guarantee of its efficiency and permanence as an industrial partnership would depend, negatively, on continuing to exclude from the profits of management those persons receiving less than \$1,200 and only recently taken into employment, and on excluding them from voting. But quite as much the guarantee of success would depend, positively, on assigning new stock according to salary and allowing the vote according to shares of stock held.

By this arrangement the central causes of previous failures are eliminated. There is danger of failure when low-paid workmen are admitted to the profits of management, chiefly because they are not true managers, and perhaps because they would be receiving the gains of others and so disaffecting the others. There is danger of failure when employees only a short time in engagement with the company are given a share in profits and a vote. There is danger of failure under outright welfare arrangements and provision for postponed rewards. There is danger of failure when, as in producers' cooperative systems, each man gets only one vote, no matter what his position with the company; then jealousy of the managers, desire to reduce their salaries, even deposition of the managers, may break down efficiency.²

²For a brief statement of the usual weaknesses of profit-sharing schemes see Taussig's *Principles of Economics*, vol. II, pp. 303 ff. See also Schloss' *Methods of Industrial Remuneration*. The rapidly expanding literature on efficiency in business contains in detail much that is pertinent.

Along with the internal safeguards described, the external safeguard is perfectly exemplified. The speculative stockholder, the ignorant and indifferent stockholder, the scheming broker, all these are excluded from the management, when at his best the absentee stockholder, acting through his representatives, the directors, only manages the business by selecting and promoting the able workmen within it. In the Dennison Company, as in many others, the directors themselves have commonly if not always risen from the ranks. The more democratic the business, the more this is likely to be the case; and the less will the employer seem to be the exploiter. Some persons are sceptical of democratic tendencies in business, but even such should discern the essential promising features of the present experiment: first, that the death of the founder does not tend to the disintegration of the business; second, that the workmen may feel that, though they do not wholly own their business, yet their extra productive effort, their co-operative loyalty in expending effort, will return extra profit to themselves alone and not to idle and non-responsible outsiders. The Dennison scheme is not like any previous scheme known to the writer. Doubtless its essential features will find their way into the organization of other companies. Its unfolding history, and the history of other similar corporations will be studied with deep interest by all persons who believe that radical improvement is possible in the organization of industry.

THE ATTITUDE OF THE COURTS TOWARDS INDUSTRIAL PROBLEMS

BY GEORGE GORHAM GROAT,
Ohio Wesleyan University, Delaware, Ohio.

Modern industry with its rapidly changing conditions has placed a heavy burden of responsibility upon our courts. Difficulties of adjustment unknown until recently have given rise to strife involving individual rights and social welfare. These contests have been taken to court. There the old-established principles constitute the standards. But these are not applicable to new conditions. Thus the courts face the necessity of trying to perform new tasks with old tools. Upon their ability to adjust themselves to the new requirements depends the peaceful solution of some of our most perplexing industrial problems. The responsibility is two-fold: first, that of passing on legislation that departs from former standards, and second, that of adjusting individual rights under conditions where collective activity prevails.

With the importance that is attached to precedent, it is unfortunate that so many cases have been decided in the past in a manner contrary to the public welfare. This thwarting of the public interest has generally resulted from a purpose to protect private interests and especially private property. Many of these cases are so widely known and the results so far beyond dispute that brief mention of them will suffice.

Although the Massachusetts court decided in favor of a law restricting the hours of labor for women as long ago as 1876, the court in Illinois, in 1895, refused to allow such a law to stand. It was an infringement upon the private right of citizens to contract for the length of day. The appeal of a case from the Oregon court to the federal supreme court and the elaborate opinion upholding the public necessity of such legislation has finally saved the situation. A new standard for such legislation has been established. The crux of interest was reached when the Illinois court, facing the material and the weight of authority of the nation's highest tribunal, finally reversed its own decision. The influence of the supreme court of the

United States has been potent in several states since, and uniformly the principle is sustained. It should, however, be noted that in New York a decision still stands which holds invalid a law prohibiting women from working in certain industries during night hours. This legislation the New York court regards as an infringement upon the individual rights of some of its citizens.

The effort to restrict the hours of labor in underground mines affords another instance of failure to appreciate the importance of public welfare above private interest. In Colorado an eight-hour law was passed applicable to mines and smelters. The supreme court of the state held the law unconstitutional. This opinion, both in point of conclusion reached and of reasoning, is one of the most unsatisfactory and unconvincing that any of our courts has handed down. There appears to have been more behind it than simple legal considerations, if the following statements may be taken with authority. Writing in the *Century Law Journal* (vol. 62, p. 379 note), A. A. Bruce asserts that the case of *In re Morgan* "is so evidently the result of pique and injured dignity, arising out of the fact that the legislature disregarded the suggestions made by the court in the prior case of *In re* house bill, 21 Colo. 29, that it is worthy of but little consideration." Judge Lindsey, in *Everybody's Magazine* (Vol. 22, p. 242 note), says that "Even the laboring men, during these troubles, recognized that Judge Campbell's decisions were those of an honest prejudice due to his training and his temperament." This opinion was held by the Colorado court in spite of the fact that the same principle had been sustained by the supreme court of Utah, had been appealed to the federal court and there supported. This victory for the Utah measure did not assist in securing support for the Colorado law.

While the United States supreme court has these two decisions to its credit, there is another side to the account. One case is that of the New York bakeshop law. One of the provisions of this law was the limitation of the hours of labor for those working in bakery and confectionery establishments. The highest court of the state on appeal sustained the law. The supreme court of the United States held it unconstitutional. In this unusually interesting case twenty-two judges were on the benches of the several courts. Of these, twelve in all voted in favor of the law. In the highest state court it was sustained by a majority of one, and in the federal court it was overthrown by the same narrow majority. Five opinions were written

by the New York judges and three in the federal court. Much of the argument that led to the annulling of the law is of the extreme conservative type. In some parts the opinions even border upon an attempt at the facetious, as where Judge Bartlett writes that the claims of danger to health in this industry "will surprise the bakers and good housewives of this state;" and further that the risks to health shown in the evidence are "not to be confounded with the avocation of the family baker, engaged in the necessary and highly appreciated labor of producing bread, pies, cakes and other commodities more calculated to cause dyspepsia in the consumer than consumption in the manufacturer." This opinion is to be classed as one of the most reactionary. The results were disastrous to a much-needed reform. The findings of a commission, the legislation based on those findings, and the views of the majority of the state's highest court all were set aside as unreasonable. The measure interfered with private rights. If the results are to be secured now it must be through the insistence of the bakers with prospects for a strike and much industrial loss. A further influence of this decision manifested itself as late as 1910 when the supreme court of Missouri on the authority of this opinion invalidated a law of that state, one of the provisions of which restricted bakers to a six-day week.

Even the briefest reference to this class of cases should not omit the widely known New York tenement house case. It has been the bulwark of protection of private property rights against public interests and in the view of most eminent authority it is directly responsible for the existence of tenement house problems, slums and sweatshops in all of our large cities. The opinion, it will be remembered, denied the constitutionality of a law prohibiting the manufacture of cigars in tenement houses. The basis of the opinion was the freedom of the property owner to the income from his tenement houses and the freedom of the occupant to engage in his own home in any occupation that pleased him. That is to say, the law was a violation of personal liberty and private property when conditions as understood by the court did not warrant it. In this opinion the justices strayed so far from the reality of the present-day tenement life as to refer to the situation created by the law as one that was intended to improve the health or the morals of the cigar-maker "by forcing him from his home and its hallowed surroundings and beneficent influences to ply his trade elsewhere."

Space will not allow even brief reference to the experience of many of the states with social legislation. The socially necessary measures have often been subjects for legislation which courts have many times been called upon to test in the light of constitutionality. In some instances the laws have been upheld while in others they are annulled. The grounds on which the decisions are based are quite uniformly the unwarranted interference with property rights, individual rights and rights of contract. Industrial peace depends so directly upon the enactment of such laws that until courts come to view them as in accord with social necessity, and therefore not contrary to the requirements of the constitution, there must remain elements of discord.

Turning from this field of legislation it is necessary to consider the attitude of the courts when the activities of labor organizations are involved. Here there is also confusion. The difficult problem is in adjusting individual rights established in a day when industrial relations were simple to rights of groups in collective activity with industrial relations highly complex. The difficulties and the disagreements may well be illustrated by reference to strikes and boycotts. Slowly the right to strike freed itself from the charge of conspiracy and came to be generally recognized by the courts. But what are the limitations upon this right? The courts are not in agreement in their answer. Two views obtain and they are irreconcilable. One may be distinguished as the Massachusetts view and the other as the New York view. The former has been adopted in the majority of decisions. In the opinion of the Massachusetts court, as summed up by Judge Loring, "the legality of a strike depends . . . upon the purpose for which the employees strike." In support of this view, and in further definition of it, the same court has more recently said that "whether the purpose for which a strike is instituted is or is not a legal justification for it is a question of law to be decided by the court. . . . The strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. . . . A strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike." The court nowhere defines the legal purpose in such a way that unions may be guided by the definition. Each instance must come as a separate case to be decided on its merits.

Compared with this view, that of the New York court seems extreme. As formulated by Chief Justice Parker it held in the most unqualified way that laborers may strike for any reason that seems to them sufficient. These reasons they need not even state. If they do choose to express them "their right to stop work is not cut off because the reason seems inadequate or selfish to the employer or to organized society." Here is a situation that contributes to industrial restlessness, and evidently must continue to do so as long as a strike that is legal in one state would not be so regarded by the court of another commonwealth.

Though boycotts are so generally connected with strikes the courts treat them on quite different principles. The motive is generally held as material, and as it is to harm the business of another in order to force a concession on the part of its owner, that motive is easily understood to be unlawful. As to the present legal status of boycotts there can be no doubt. In some states they have been the subject of statutory enactment. Courts have decided very positively against them. The United States supreme court has held that they are not only in violation of freedom of interstate commerce but are violative of common law rights of property. "There is no doubt," it declares, "that at common law every person has individually, and the public also has collectively, a right to require that the course of trade should be kept free from unreasonable obstructions." In the Bucks Stove and Range boycott case this same court refers to printed statements such as "unfair" and "we don't patronize" as "verbal acts" expressive of "force not inhering in the words themselves, and therefore exceeding any possible right of speech which a single individual might have." In spite of these expressions, other opinions indicate that a distinction is beginning to appear. While the development is much tardier than in the case of strikes, there is a positive note indicating that the boycott is not to be uniformly condemned. If practiced within limits it is allowed in some jurisdictions. Even the principle accepted by the federal court is not followed by some state courts. The line of reasoning in these latter cases is too long to trace here. Four opinions may be introduced as evidence, however: *Payne v. Western Atlantic Railroad Co.* (Tennessee, 49 Am. Rep. 666); *Marx & Haas Jeans Clothing Co. v. Watson* (Missouri, 67 S. W. 391); *Lindsay & Co. v. Montana F. of L.* (Montana, 96 Pac. 127); *Parkinson Co. v. Building Trades Council* (California,

98 Pac. 1027). In a still later case, *Pierce v. Stablemen's Union*, the California court goes even further in refusing to declare a boycott *per se* illegal. It argues that one may bestow or withhold his patronage as it may please him, thus placing the boycott on the same broad principle as the strike. With the primary goes the secondary boycott, in the opinion of this court. Going further, perhaps, than any other opinion, it is held that strikers may engage in a boycott; meaning that they may withdraw social and business intercourse by all legitimate means, and by "fair publication and fair oral or written persuasion" may induce others to do the same. They may go further and use "moral intimidation and coercion" to "threaten" a like boycott, thus bringing in third persons, a secondary boycott. Here the court takes what it characterizes as "advance ground" and "recognizes no substantial distinction between the so-called primary and secondary boycott." Each of these forms rests upon the right of the union to control its own patronage and to induce by fair means others to do the same. As the unions would have the "unquestioned right to withhold their patronage from a third person who continued to deal with their employer," they must have the right to notify them of their intended action.

Such are some of the differences that have developed in the effort to formulate out of the old material principles that will be adaptable to the conditions of industry that prevail to-day. As with social legislation so in these instances evidence is not wanting that courts are making a distinct contribution to the interests of industrial peace, though disturbing elements are still present.

It is evident that before our courts can make themselves of the highest usefulness in solving the perplexing problems of the present and in establishing more firmly peaceful relations in industry, some very important changes must be made in their attitude. In a more elaborate study the writer has endeavored to show more in detail the important elements of this situation. In "The Attitude of American Courts in Labor Cases," extracts from a large number of opinions are brought together from which conclusions are drawn. Stated briefly because of the limitations of space these necessary changes must include the following.

The sacredness of precedent, an exaggerated form of respect for former opinions and an overdone desire to preserve continuity in legal decisions, undoubtedly result in checking healthful lines of

progress and estopping some highly beneficial legislation. The courts exhibit at times an almost blind devotion to this principle, and so long as they continue in this extreme the cause of industrial peace must suffer. Adherence to precedent must be less rigid. If conditions have so changed as to alter the applicability of a legal principle, the knowledge of such conditions must be as clear and keen in the minds of the court as that of the principle. This will bring greater freedom from the binding force of precedent and a correspondingly wider margin for variation to suit new conditions. There can be no doubt that blindness to conditions has led courts in the past into serious error, as they have insisted on enforcing a principle where conditions were no longer suitable for such a course.

Legal training, accountable for much that is reactionary, must be changed. Severe comment on the content of text-books, on the law's backward look and on the stereotyped phrase is already beginning to appear. The pages of law magazines are speaking in open criticism of the past and expressing clearly formed demands for the future to the end that courses of law be modernized and socialized. The relation between sociology and jurisprudence is a topic both timely and profitable. Some of our leading jurists have already indicated a sense of responsibility to the present as well as the past. The number is increasing. The sentiment that indicates hope for the future has been well expressed by Mr. Justice Holmes: "In my opinion economists and sociologists are the people to whom we ought to turn more than we do for instruction in the grounds and foundations of all rational decisions." Speaking again, this distinguished jurist declares that "the true grounds of decision are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and general propositions of law which nobody disputes." That an increasing number of judges appear to be adopting the principles thus expressed, though in our haste the increase may seem exasperatingly slow, is an element that greatly brightens the outlook. Yet changes in this direction must come at a greater pace, as at best they can manifest their results but slowly.

The former views of individual rights must be decidedly modified. They must be given a social content. The possibility of individual rights remaining unmodified amid rapidly changing conditions of society is very remote indeed. While the declarations of rights in our constitutions have uniformly declared in general terms for

equality of personal rights, such rights have never been uniform in fact. Applicable at first to civil conditions they are now being carried over into the industrial field. Here the equality has been less evident. Yet our courts have not fully realized this and have continued to use expressions once full of meaning in real life but now quite empty. Judges, as well as others, must apply what is really a very commonplace fact, that where there is a practically unequal distribution of rights, and an effort is made to equalize it, rights and privileges can be enlarged on one side only by curtailing those on the other. To continue to insist on the inalienable right of one in face of an expanding right of another is highly impractical. The slave had nothing to say concerning his condition. The owner had unrestrained freedom. It was impossible to free the slave without a corresponding limitation of the rights of the former master. Under conditions of individual wage contract it may fairly be assumed that in an earlier generation the rights to contract were about equal. More and more it is now true that men are employed by proxy and are hired in gangs. Conditions of labor are fixed by the employer and the laborer may accept them or let the work alone. Collective bargaining is one means of equalizing the situation. Yet when this method becomes so effective as to turn the tables against the employer and leave him a similar alternative, courts see differently. The federal supreme court in the *Bucks Stove and Range* boycott case discovers the inequality when it says, "But the very fact that it is lawful to form these bodies [labor unions], with multitudes of members, means that they have thereby acquired a vast power, in the presence of which the individual may be helpless." When collective bargaining has not accomplished a needed result, legislatures have sought to equalize the conditions by statute. Some courts accept such measures as of practical necessity. Others reject them. The course of procedure in cases where these laws are overthrown is quite uniform. The argument presented is that the law is an infringement upon rights of contract. The employee is not at liberty to contract for long hours, irregular pay or some other conditions unfavorable to him. The employer thus takes up the fight in behalf of his employee whom the legislature is seeking to deprive of his constitutional rights. Hearing these rights expressed in the conventional form of individual relations, the courts lose sight of the conditions that really determine the situation and the decision is handed down in favor of

the employer's contention. Be it said that at least twice the court has seen the real situation in the case. Once the Washington court points out that the law is contested only by contractors who would reap benefits by the law's repeal. Again, the federal supreme court shows that the employer virtually claims that the act "works a peculiar hardship to his employees whose right to labor as long as they please is alleged to be thereby violated." The opinion adds significantly, "the argument would certainly come with better grace and greater cogency from the latter class." Such interpretation of individual rights in modern industry as have been made in many of these cases cannot contribute much hopefulness for continued industrial peace. It is one of the lines in which most serious consequences follow. Constitutions are made instruments for depriving of their rights the very ones whom they are intended to protect and who stand most in need of their protection. A restatement of constitutional rights in terms social rather than individual is a change that is imperative.

Finally, a matter of prime importance in the interests of industrial peace is the attitude that courts take toward the common law. Common law is essentially changing in its nature. To contend that it has the permanency of the constitution seems wholly untenable. Yet such appears to be the view of some courts. The opinions in the recent cases of workmen's compensation may be taken in evidence, as they clearly show a difference of view and a tendency to confuse the common law with the principles of the constitution. In all of these cases it is freely admitted that the legislation is "economically, sociologically and morally sound." To speak of the common law as adequate to the problem, declares the Wisconsin court, "is to jest with serious subjects, to give a stone to one who asks for bread." Speaking more directly in relation to the common law the Massachusetts court is of the opinion that "the rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the constitution, and the legislature may change them, or do away with them altogether as defenses." Compared with these views the New York court manifests a different attitude toward this subject. The confusion appears most plainly when the opinion states that "The statute, judged by our common law standards, is plainly revolutionary. . . . The radical character of this legislation

is at once revealed by contrasting it with the rule of the common law. . . . Under our form of government, however, courts must regard all economic, philosophical and moral theories, attractive and desirable though they may be, as subordinate to the primary question whether they can be molded into statutes without infringing upon the letter or spirit of our written constitutions. . . .

When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. . . . It is conceded that [the liability in the new law] is a liability unknown to the common law and we think it plainly constitutes a deprivation of liberty and property under the federal and state constitutions."

In discussing thus the work of the courts it must not be inferred that they do not serve a useful purpose. Conservative forces society must have or there would be no continuity. Courts conserve our former experiences and enable us to profit by them. So long as changes come slowly there is time for a readjustment with less friction. But in our day changes come with unparalleled rapidity. Friction must be present because of the very nature of the work that our courts have to do. It may be greatly lessened, however, if judges will realize the facts and endeavor to be governed by them. A greater degree of socialization must come. At present it is coming without much assistance from the courts. It need not be so. With such changes accomplished as have been indicated the progress toward the socialization of industries will be rapid. The situation cannot be summed up in brief better than in the words of the opinion from the Wisconsin court: "When an eighteenth century constitution forms the charter of liberty of a twentieth century government, must its general provisions be construed and interpreted by an eighteenth century mind surrounded by eighteenth century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes."

THE STANDPOINT OF SYNDICALISM

BY LOUIS LEVINE, PH.D.,
Columbia University.

The standpoint of Syndicalism is clear and definite. Syndicalism expressly denies the possibility of industrial peace under existing conditions, frankly proclaims its determination to carry on industrial warfare as long as the present economic system exists, and firmly believes that only the realization of its own program will establish industrial peace on a permanent and secure basis.

Syndicalism arrives at its first conclusion by an analysis of existing economic conditions. The fact which is untiringly emphasized in the Syndicalist analysis is the objective antagonistic position of those engaged in modern industry. The owners of the means of production directly or indirectly running their business for their private ends are interested in ever-increasing profits and in higher returns. The workingmen, on the other hand, who passively carry on productive operations are anxious to obtain the highest possible price for their labor-power which is their only source of livelihood. Between these two economic categories friction is inevitable, because profits ever feed on wages, while wages incessantly encroach upon profits, and because the passive wage earners shake off now and then their submissiveness and reach out for more control over industrial conditions, while the owners and directors of industry resent the interference of the workers.

From this twofold antagonism, rooted in the structure of modern economic society, struggle must ever spring anew, and this is the reason why all schemes and plans to avoid industrial conflicts fail so lamentably. Even the conservative trades unions, based on the idea that the interests of labor and capital are identical, are forced by circumstances to act contrary to their own profession of faith. Organizations, like the Civic Federation, are doomed to impotency. Boards of conciliation and arbitration work most unsatisfactorily and can show but few and insignificant results. If arbitration is once in a while successfully resorted to, it is only when the menace of a great and dangerous industrial conflict stares the community in the face.

But the threat of a strike is as much a manifestation of industrial peace, as the mobilization of troops on the frontier is a manifestation of international peace.

It is preposterous—argue the Syndicalists—to attribute the acute character of our industrial conflicts to “pernicious agitators,” socialists, anarchists, and “turbulent” individuals generally. Would a miracle still be possible in our sceptical age, and should all these “undesirable” elements be rushed to Heaven on a fiery chariot, our world would still remain a battleground of opposed interests. One must ignore the elementary facts of human psychology to believe that a few individuals, however gifted and energetic, could move large masses of men to action unless the conditions in which these masses lived prompted them to follow these leaders. And one must be blinded by hopeless optimism to believe that all the employers will one day become benevolent and “inspired” and will joyfully hand out to the workers all that the latter may demand, thus removing all occasions for mutual ill feeling and conflict.

The most that can be achieved by benevolent effort as long as the basis of modern economic life remains unchanged is to mitigate now and then the violent character of the industrial struggle and to ward off a conflict here and there. But the result is hardly commensurate with the energy spent, while the principal aim of these efforts—industrial security and peace—is not attained. As is shown by experience, conflict mitigated once becomes more violent the next time, and warded off at one point breaks out at ten other points. All efforts, therefore, to establish industrial peace under existing conditions result at best in the most miserable kind of social patchwork which but reveals in more striking nudity the irreconcilable contradictions inherent in modern economic organization.

There is but one logical conclusion from the point of view of Syndicalism. If industrial peace is made impossible by modern economic institutions, the latter must be done away with and industrial peace must be secured by a fundamental change in social organization. At the root of the struggle between capital and labor is the private ownership of the means of production which results in the autocratic or oligarchic direction of industry and in inequality of distribution. The way to secure industrial peace is to remove the fundamental cause of industrial war, that is, to make the means of production common property, to put the management of industry on a truly democratic basis and to equalize distribution.

In general terms the program of Syndicalism may not seem to differ in any respect from that of socialism, and, in fact, socialism and Syndicalism have many points in common. Yet there is an essential difference. The Syndicalist analysis of modern society emphasizes a point which is not prominent in socialism and which leads to important differences in their constructive programs. That point is the question of control. While the socialist lays emphasis on what he considers the exploitation-features of capitalistic society, the Syndicalist lays no less emphasis on the relations of authority and freedom in economic life, on the aspect of direction and management in industry. The Syndicalist finds that this is one of the sources of industrial troubles in the present, and he is convinced that a proper solution of this aspect of the social problem is essential for industrial peace. He can not agree with the socialist that the concentration of the economic functions of society in the hands of the state represented by a government elected on the basis of territorial representation is the proper and adequate solution of the problem. The Syndicalist distrusts the state and believes that political forms and institutions have outlived their usefulness and can not be adapted to new social relations. The Syndicalist program for the future, in so far as it is definite and clear, contains the outlines of an industrial society—the basis of which is the industrial union and the subdivisions of which are federations of unions and federations of federations. The direction of industry, in this ideal system, is decentralized in such a manner that each industrial part of society has the control only of those economic functions for the intelligent performance of which it is especially fitted by experience, training, and industrial position.

The Syndicalist is convinced that until his program is carried out, industrial peace is impossible. To one who believes in the eternal character of existing economic institutions such a pessimistic conclusion could not but be a source of grief and regret. But the Syndicalist, guided by the idea of social revolution, feels differently. While he may regret the suffering and social disturbance which follow in the train of industrial struggles, he sees in the latter another aspect which is to him a source of gratification and hope. This other aspect is what he considers the organizing and constructive power of the industrial struggle—its creative force.

The creative force of the industrial struggle, according to the

Syndicalist, manifests itself in a series of economic and moral phenomena which, taken together, must have far-reaching results. In the struggle for higher wages and better conditions of work the workmen are led to see the important part they play in the mechanism of production and to resent more bitterly the opposition to their demands on the part of employers. With the intensification of the struggle, the feeling of resentment develops into a desire for emancipation from the conditions which make oppression possible; in other words, it grows into complete class consciousness which consists not merely in the recognition of the struggle of classes but also in the determination to abolish the class-character of society. At the same time the struggle necessarily leads the workmen to effect a higher degree of solidarity among themselves, to develop their moral qualities, and to fortify and consolidate their organizations. The stronger the latter become, the more do they assert themselves in the economic struggle, and the more evident does it become to the workers that their organizations could readily supplant the organizations of the capitalists and assume the control of the economic life of society.

It is evident that unless the Syndicalist could theoretically connect the struggles of the present with his ideal of the future, the latter would remain a beautiful but idle dream even in theory. For the Syndicalist, as has been said, does not believe in the efficacy of benevolent intentions, nor does he think the power of mere abstract ideas sufficient for transforming society. He is bound, therefore, to find concrete social forces working for the realization of his ideal. His position forces him to prove that his ideal is the expression of the interests of a definite class, that it is gradually being accepted by that class under the pressure of circumstances, and that the social destinies of the "revolutionary" class are more and more identified with the Syndicalist ideal. In the theory above outlined the Syndicalist believes he has solved his problem and has found the connecting link between his analysis of the present and his outlook for the future.

Having thus defined the significance of the industrial struggle, the Syndicalist is led to lay down rules of practical activity in accordance with his theory. He cheerfully accepts the conclusion that if industrial strife is creating social harmony his task is to intensify the struggle, to widen its scope, and to perfect its methods—in order that the creative force of the struggle may manifest itself as thoroughly

and on as large a scale as possible. He, therefore, logically, assumes a hostile attitude towards all efforts tending to mitigate the industrial struggle, such as conciliation and arbitration, and definitely enters the economic arena for the purpose of stirring up strife and of accentuating the struggle as much as is in his power.

To those who are anxious to bring about peace between labor and capital on the basis of existing economic and legal institutions, the Syndicalist must necessarily appear as a disturbing factor in the situation. The Syndicalist will not deny this nor will he be forced to change his attitude either by denunciation or by persecution. From his own standpoint, the Syndicalist believes that he is merely sincere in looking facts in the face, logical in drawing the proper conclusions from them, and rationally optimistic in seeing through the mist of the contradictory present the rising sun of a socially harmonious future.

EDUCATION AND INDUSTRIAL PEACE

BY HERMAN SCHNEIDER,

Dean of the College of Engineering, University of Cincinnati.

Frankenstein

About a century ago Lord Byron, Shelley and Mrs. Shelley pulled through a season of bad weather in Switzerland by making and telling one another gruesome stories. And they talked also of the new theories of Evolution. So Mrs. Shelley let her mind run riot with speculations on the nature of life and devised the story of Frankenstein. Frankenstein was a young man obsessed with an amazing zeal for scientific discovery, and one day he discovered the secret of life. Then he laboriously put bones and sinew together and made a man. But when he injected his life-giving fluid into it, it arose a hideous thing of brute strength. Subsequently it destroyed Frankenstein's little brother, his best friend, his wife, his father, then Frankenstein and finally itself. The story has lived a century not because it is well written nor because it is unlike the ordinary, but because it fits recurring human experience.

The Frankenstein System

The story of Frankenstein means that a little science is a dangerous thing; it means too that an isolated science is a positive menace. Man has a tendency to bigness in construction upon slackly-scanned footings or upon one well built but isolated pillar. And once he has constructed and the structure begins to wobble, he scurries about to patch up with makeshifts and expedients, which latter make but little for additional strength and much for complexity. And next the expedient, which usually has been put in place by the specialist or the opportunist as the salvation of the tottering structure, appears to the panicky as the real pillar. Some there be who advocate putty for the cracks and a fresh coat of paint, to restore public confidence; usually they have putty and paint for sale. Again a few—a very few—quietly insist that if the structure is to be saved, there is only one way to save it—to get each column down to bed rock. This

will cost much, it will take time, it will require careful investigation, it will cause inconvenience—and usually it ends by the specialist or the opportunist putting in another prop. Both those who own the structure and those who toil within are in a condition of unrest and apprehension; while outside are the house-doctors—the politicians, the scientific management experts, the pedagogues, the financiers—each putting up his prop. Props cost money, particularly the specialist's prop. The maintenance cost of the structure increases, the rents go up and finally the burden of propping goes to the shoulders of those who work within. Some day, despite the props, the structure collapses; Frankenstein is destroyed by the Thing he built. And those who survive begin to build anew.

Education and the Frankenstein System

In this year of grace, our commercial and industrial edifice shows signs of strains—of unevenly distributed loads. The proppers have been propping, and plenty of putty and paint have been applied; but to little avail. And now Industry has sent up a Macedonian cry for help to education. The appeal, made first to the public school, has been passed up to the university. This is right, because, strangely enough, the university has had much to do with bringing about present conditions. For, in the name of science, the university has furnished the material with which modern industrialism has been built. Our laboratories have been humming for a hundred years discovering, combining and inventing in chemistry, biology, physics and economics—why? The answer is so easy: To benefit man, to elevate him, to insure human progress.

Well, have we done it? The answer is not so easy and must rest on this: If we have added to the mental, moral and physical advancement of those who work, yes; if not, no. But, it will be argued, we have discovered scientific truth—that is our function; if others have misapplied it, we are absolved. Are we,—the University? If we have placed powerful tools in men's hands without teaching them how to use them wisely, have we done our whole and obvious duty? Let us see if we have. Let us consider if the work which man does to-day and the conditions under which he does it, make for his mental, moral and physical advancement, for these are the real results to humanity of our century of effort. If, for example, it is true that England is anemic, nervous, losing its self-control and incapable of sustained

resistance, and if this is the result of the unwise use of the science which has made its modern industrialism, what shall be the merit of the universities which furnished the powerful tools but not the men to use them safely? If they furnished the men, then why the sick condition of England? Have the schools trained bed-rock diggers or have they trained proppers? By all means, let us analyze this thing we call work, for obviously we shall have to heed the Macedonian cry whether we want to or not.

Work and Unrest

The basic object of work is the same as it was in the stone age—to obtain food and shelter. Work is the fight for self-preservation and self-perpetuation; the strategy of the fight furnished and still furnishes the stimulus for brain growth. The mental exercise derived from devising a stone hatchet or a crude animal trap had as great a mind-building value as has the construction of a bank safe or of a modern factory. In the stone age the immediate problem was to get and to protect; both were accomplished by physical strength mainly, by cunning partly. To-day the immediate problem is the same, but we call our problem of getting, "industry and commerce," and our problem of protection, "government." When, in paleolithic days, Mr. Strongarm emerged in the dawn from his cave with a healthy appetite and saw Mr. Smallbones down the path carrying a flank of deer meat, it was strictly in accordance with the then law for Strongarm to use the superior physical might which nature gave him, to take his breakfast from Smallbones. This developed cunning in Smallbones. To-day it is contrary to law for the burly one to stop Smallbones on the sidewalk and abstract his pocket-book; besides Smallbones may have a knife or a revolver, the product of the cunning of generation upon generation of Smallbones. In fact, the cunning Smallbones now has his breakfast produced for him by the brawnier Strongarm. It is strictly in accordance with the present law for Smallbones to use the superior mental might which nature gave him to get his breakfast from Strongarm.

All changes of law, or government, if you wish, have come when Strongarm or Smallbones, which ever happened to be the exploited one, was not left enough breakfast by the exploiting one. When government ceases to protect the weak, the weak, curiously enough, get strong and change the government; sometimes also the strong

get weak from too much breakfast and not enough work. When we shall reach a condition of stable equilibrium of work and breakfast for both Strongarm and Smallbones we shall have the millenium and industrial peace, and not before.

Now it is not improbable that one day Smallbones by his cunning devised an animal trap which would get as much meat in a day as the stone hatchet could kill in a month. Further, it was less hazardous than the old method of personal attack. But to construct it required the brawn of Strongarm. So the first partnership was formed with Smallbones as general manager, because his was the directing thought, and with Strongarm as the workingman, because his was the constructing muscle. It is not improbable, too, that when the first killing was made, the first labor trouble started over the division of the profits. What was Smallbones' share? His thought produced as much in one day as was formerly produced in thirty days. What was Strongarm's share? He sweated and toiled to build the new industry while Smallbones sat in the shade and thought. Of course, we know the question was not settled, for we still have it with us. It is one of the elements in our industrial unrest.

But even after some division of the profits was made, Smallbones was still confronted with the problem of protecting his earnings from the might of Strongarm, and Strongarm was also confronted with the task of protecting his earnings from the cunning of Smallbones. When they finally got together to talk this over, self-government began; and they learned what the complexity of our modern self-government tends to make us forget, that self-government to be successful must first be individual, that collective self-government by ourselves can persist only when there is individual self-government of one's self. Collective self-government must be in the hands of individuals; they make the laws. The laws, as with Smallbones and Strongarm, are basically agreements to respect each other's rights. When the individuals in whose hands our collective self-government rests, cease to govern themselves and by the craftiness of Smallbones or the might of Strongarm obtain for themselves and their instigators more than their share of what all produce, we have another element of industrial unrest.

The spirit of the law is mutual justice; when the spirit leaves the law, the law is a mummy which does not speak, but which only appears to speak through the cleverness of ventriloquists who have

practiced speaking in the name of the law. When unrest vents itself in revolution, it is the same spirit voicing its cry through the original authors of law, after it has found it impossible to speak through the law itself.

The Three Essential Results of Work

The spirit of the law voiced itself most clearly in the words, "life, liberty, and the pursuit of happiness." Fundamentally a constitution which we might make for our generation would possess the same basic elements as would have met the fair-play agreement of Smallbones and Strongarm and their colleagues in the stone age. The stone age constitution might have read like this:

Article I.—Life

We will hunt together.

We agree to equal opportunity in the chase.

Some there be who are smarter to devise and to direct than others; these shall devise and direct as long as their devising and directing make good hunting. Others there be who are more nimble of muscle than of thought, and who are strong; these shall do the work of nimbleness and strength according to the plan of attack laid down by the leaders.

No trap for getting food shall be hurtful to the strong and nimble ones who build it and who make it work; the reason we build the trap is to lighten the task of getting meat for those who direct and for those who are strong of muscle, also to make the getting surer for all. We will not devise and we will not work on a trap which is hurtful or which does not get all of us more food than the stone hatchet did.

Everybody's male child shall be taught all the tricks of the chase. Those who devise and direct shall see to this.

If a man is killed or crippled in helping to get meat for all of us, his woman shall not have to become one of those who work at the traps; she shall stay in her cave to guard her children, and she shall get her man's share of the meat. Her male children shall be taught all the tricks of the chase also. To do otherwise would later weaken the tribe.

A lazy man and a thief shall be banished into the wilderness.

So much for food, now for shelter.

When we hunted each for himself, every man had skins in his cave against the weather; also he made his cave secure against all his enemies—the storms, the beasts and the prowler. Now that we hunt together, each must have his share of skins; and if some excel at making traps and getting meat and others at securing the cave against enemies, the first shall get of the meat in such share that the second shall be well fed also. Those who devise and direct shall see to this.

We hunt together in order that there shall be more meat and better shelter; else what is the use of hunting together?

Article II.—Liberty

When we hunted alone, each lived as his spirit guided him. Now that we hunt together a common spirit must guide us; for each spirit voices a different command from each other spirit. If each were guided in the chase by his own spirit or tried to follow the guidance of all the spirits, all would be confusion and profitless monkey chatter, and there would be no meat. There must be one spirit on every matter. So in any matter all shall have a say; and the spirit of the work shall be what the most say. This shall be the law and all shall hunt accordingly.

Now, lest unrest destroy the tribe, let those who devise and direct and those who do the heavy work know this: Liberty means equal say in making the law, equal responsibility to the law and equal justice from the law; words are not the law any more than the tongue is the mind. The spirit of each has equally wrought the law. So in return the law shall voice the spirit equally for each.

Article III.—The Pursuit of Happiness

There is no finer fun than hunting. To go forth in the dawn for the day's meat, to expand in the sunshine, or to battle against the storm, to debate with each other the plan of the work, to match with each other in feats of strength and deftness of skill, to return at night with a fair share of day's earnings, to lie steeped in tired ease while the women cook the meat and the children tell the day's trifles—this is what makes a satisfied man. The joy and satisfaction which inhere in the task of getting meat must be preserved; otherwise life will become a heavy and a terrible thing.

So then, since we work together in order that there shall be more meat, better shelter and deeper satisfaction, those who devise and direct shall see to it that the work gives to every man these natural and necessary benefits.

Work makes the spirit of a man; it must not break the spirit of a man. A man with a broken spirit is a menace to the tribe, for the spirit of men makes the law.

The quantity of unrest in a community is in direct proportion to the extent to which these three fundamental principles are being ignored. As a matter of fact these basic concepts are the primal elemental impulses which have pushed mankind forward and upward. Any human cooperative structure which does not rest on them in fact, not in words, is bound to wobble; there will be a scurrying for propers and props. The leader who devises and directs without devising and directing in conformity with these principles is a Frankenstein.

It would appear then that the real test of education's worth to the state is in this: Does education train the leaders to do sound building? There are really two questions here: Does it train the leaders, and does it teach the principles of sound building?

The Leader

The leader emerges from the mass. There is no known rule of heredity for personality, for intrinsic quality. There is a divine right of leadership but it does not descend from father to son; it is conferred in utter disregard of wealth, creed, name, condition or caste,—and it is non-transferable. The personality which creates leadership pushes instinctively above the dead level, above mediocrity; and the fight up through the mass is what gives the leader the strength to supplement personality.

Education and the Leader

The leaders who devise and direct in industry are usually men who left school when they were about fourteen years old and went to work at the bottom. Their schooling has consisted of elementary work in reading, writing and arithmetic. Plunged into the competitive struggle for a living with nothing but their innate resources to fall back upon, their wits were sharpened and their natural gifts of planning for and directing others stood out in bold relief. They advanced step by step acquiring the two main essentials for shop management, a detailed knowledge of practical shop processes and an expertness in handling men. Many of them have become well "educated," that is well and widely informed and able to think, solely by their own efforts.

It is entirely safe to say that our present system of organized education has had very little influence in the training of those who actually manage the operations in factories, except as it has furnished them material science as a tool of operation. This is not a surprising fact, for the brains and the personality necessary to leadership are just as likely to be born in the alley as on the avenue, and their chances for an accession of strength through overcoming obstacles are greater in the alley than on the avenue. And since the number of men graduating from college is almost a negligible percentum of those who grow up and work, the cause is obvious. So then our formally organized system of education has had little to do with the training of those who devise and direct industrial work. We (in education) do not train the industrial leaders; they are trained by industry itself. There are, of course, the usual exceptions.

The greatest problem confronting a people is the stability of

its civilization. Now it is assumed without argument that the business of education is so to guide the mental processes of the people that they will build safely and permanently. It would seem then that not the least function of education is to train those who by natural gift devise and direct and also to guide the training of those whose lot it is to do the actual physical labor. The problem then is first to search out those whom nature intended for leadership in industry and to train them thoroughly in the three principles of sound building, and second to instill into those who labor an appreciation of these three principles as well as to ensure for them skill in their daily tasks.

Now, since the leader emerges from the mass, and since he gives evidence of his leadership in industry rather than in the school, it is evident that education must seek some connection with industry to obtain him; and since the detailed knowledge of practical affairs essential to industrial management can be obtained only under industrial conditions, the further need of a tie between education and industry is evident. Industry and education must work together, therefore, to meet the problem of industrial unrest, and each has its separate but coordinated functions. Industry through the competitive processes in its daily tasks searches out the leader and gives him his practical training. Education implants in him the three fundamental principles of sound building, together with the necessary material sciences of his profession. Further, the need of this tie between education and industry is imperative, since bread and butter necessities and parental misguidance drive thousands to work at an early age.

Education and Industry

An effort is being made in Cincinnati to evolve out of the old school processes both in the public school and in the university a system of industrial education which will meet squarely the basic problems of the life of an industrial community. A description of the work which has been done and which is contemplated will probably exemplify these theories of education more clearly than the constructive argument which led to their adoption.

Seven years ago the Engineering College of the University of Cincinnati deliberately set about to install a scheme for training men for the higher positions in industry, by entering into a cooperative arrangement with the industrial plants of the city. The scheme is very simple. The students alternate weekly or bi-weekly between

the university and the industries, and are divided into two sections alternating with each other, so that the shop and the university are always full-manned. In this agreement the functions of the university and of the shops are sharply defined. The shop operates a system of practical training which is approved by the university. This training is designed to bring out the qualities of devising and directing possessed by the students and also to give them the thorough practical knowledge necessary to leadership in production. The university trains the men in the theories underlying the practice and instills as far as possible the fundamental principles of sound production; the university also coordinates the theory and the practice. At this writing the university cooperates on this basis with about seventy-five industrial concerns and has about four hundred students in the course.

When these cooperative engineering courses were safely under way a continuation school for shop apprentices was opened under the direction of the public school authorities. Under the continuation school agreement the manufacturers release their young working people for periods of four to eight hours a week to the public schools for instruction. In most cases the apprentices are paid for the time they are in the school just as if they were at their machines in the shop. It is the function of the teachers of the continuation schools working in conjunction with the factory superintendents to search out the young men and women of ability and to continue them in their instruction to the highest point which their abilities will permit them to attain. The day continuation school courses in conjunction with certain night school courses furnish sufficient credits for entrance to the university.

Under the continuation school plan the school has no authority over the kind of work the young people do in the shops, but the public schools are now inaugurating cooperative courses in which, as in the university, the shop work is planned with the approval of the public school authorities. It will be evident, therefore, that a path is open through all the educational facilities of Cincinnati in continuous and direct contact with industry. At the present time the work does not embrace all the types of industry since thoroughness in organization and operation would not permit so sudden and radical a departure; but gradually the whole plan is being realized.

This brief outline of a constructive movement with certain

specific ends in view is given without tiresome detail to show that the plan here proposed of coordinating education to industry for the material, moral and physical welfare of the people of an industrial community is possible of realization. The further plans contemplate the gradual extension of the university cooperative course to embrace the training of men in all phases of city life where science is used in production or where men work in groups under direction. This contemplates cooperative work with banks, insurance companies, commercial houses, libraries, the city government, general manufacturing business not classed as engineering, railroad and traction companies and public service corporations. At this writing the work has already been extended to the medical school in conjunction with the hospital and the various health agencies of the city, so that the medical practitioner will be a preventive as well as a curative agent. The Engineering College also cooperates with the city's department of public service in the training of municipal experts. A beginning has been made with the traction and railroad companies.

It will be obvious that when the plan is more completely in operation a natural system of selection in education will prevail. Under present conditions universities accept any young man who can present sufficient academic credits from an accredited high school. After they receive him they give him additional academic work for four years. At the conclusion of this period, upon graduation, the young man is sent out to compete with those who have fought their way from the bottom upward. Our own students in their athletics know better than this. They would not tolerate for a moment a physical director who would put them in groups on a grand stand and give them a lecture on the theory of jumping hurdles, at the same time exemplifying this by his own demonstration of hurdle jumping. A team selected on fourteen academic credits and trained four years by a lecture system, and then sent out with a diploma to compete with the youth who had learned how to jump hurdles and to race in the hurly burly competition of the corner lot would hardly do credit to the wisdom of the institution.

Modern industry, like Frankenstein's man, is a powerful machine which lives and grows greater by reason of the injection into its organism of material science. We seem to be at the point of industrial progress where we must control industry or industry will control us.

In building industry we aimed to shape it to our needs; we are in danger now of shaping ourselves to its needs. Hence our unrest. Surely education can perform no greater service to humanity than to seek out men of ability and train them to devise and direct in such a way that life, liberty, and the pursuit of happiness shall be natural results of the day's work.

FACTORY ORGANIZATION IN RELATION TO INDUSTRIAL EDUCATION

BY HUGO DIEMER, M.E.,

Professor of Industrial Engineering, Pennsylvania State College, and
Consulting Industrial Engineer.

ORGANIZATION DEFINED

Organization consists of the laying out of the scope and limits of action of the various individuals and groups of individuals whose work is required for carrying on the objects of the establishment. It consists further of the uniting of these individuals and groups of individuals in such a manner as to cooperate harmoniously for the common good. In a good organization the laying out and uniting have been done in such a manner as to carry on the objects of the establishment along lines which secure greatest effectiveness and economy. Organization is distinct from system and management, although the term has been loosely used to indicate or include either or both by persons who have failed to make proper distinction. An industrial establishment may have excellent filing and accounting systems but no well-defined lines of organization. Again there may be clearly defined organization but very poor management.

TYPES OF DEPARTMENTALIZATION AND CONTROL IN A NEW ORGANIZATION

Determine first the processes and classes of activity required of plant, equipment and human individuals. List these in detail. Then determine which of these prime elements are to stand alone and which are to be combined so as to make a well-arranged, well-built, smooth-running machine of the entire aggregation of individuals. Such determination requires a knowledge of the principles of control. Control may be based on the principle of military authority, as exemplified by the line officers, on specialization or on functionalization. Each of these principles will be dwelt on in further detail.

Numerical-Military Type.—The numerical type of departmentalization and control, sometimes designated as the military type, divides the men into groups in such a manner that each group receives its orders and instructions of all kinds from one man only. This man in some shops is known as the gang leader. The gang leaders in turn get their orders and instructions of all kinds from the assistant foreman. The assistant foremen get their orders and instructions of all kinds from the foreman. If it is a railway shop the foremen get their orders of all kinds from the assistant master mechanic. The assistant master mechanics get their orders and instructions of all kinds from the master mechanic. The master mechanics get their orders and instructions of all kinds from the superintendent of motive power.

Specialized Type.—In this type all similar duties and trades are selected and performed by one man or group of men so far as processes and classes of activity permit. The departmental division then follows processes, trades and classes of labor and equipment. The principle of specialization, though of slow growth, has come into pretty general application even in conservative establishments. It is exemplified in the manufacturing side by such departments as lathe department, automatic screw machine department, milling machine department, etc., and in the commercial side by such departments as correspondence, sales, etc.

Functionalized Type.—This term is used to designate a type of control in which there is delegated to a staff officer or department absolute control over certain features, performances or functions common to all departments but distinct from specialized duties. To distinguish between specialization and functionalization we may define a specialist as an individual who is expert in a certain trade, handicraft or science which is an essential constituent of the particular industrial process of the given establishment. A functional staff officer or department, on the other hand, investigates a single phase or aspect common to all these handicrafts, trades or sciences.

Functional management is more than the assignment of one function to a specialist, which is the distinguishing feature of specialization. Functionalization determines what functions come into play in managing all departments and establishes a functional head for each of these functions, such functional head being supreme in that function in all departments. It is by means of the functional

departments and staff officers that the efficient modern organization best accomplishes the co-ordination which is so requisite after departmental specialization has been well instituted.

Setting Forth Specific Duties.—These must be clearly set forth not only for each group of individuals and various department heads and sub-department heads, but also for the general and managing heads, groups and committees. Departmental and individual duties must be clearly defined. Charts or diagrams should be prepared to show limits of authority and responsibility as well as interrelation of various departments, officials and committees of the organization as a whole. Similar departmental charts and diagrams should be prepared for the various departments and sub-departments. These charts must be supplemented by explicit detailed instructions.

It must be distinctly specified as the first duty of each department head that he is to carry on continuously the particular departmental duties and relations. In these matters he must yield his personal ideas to the expressed will of the organization as a whole.

Determining the Will of the Organization as a Whole.—In planning a new organization and matters pertaining to such a change, the officers desiring to institute the change should call a meeting of the various existing officials and department heads and present the proposal to them. The proposal should be presented in written form, a copy being furnished to each man present. A time should be set when after due reflection the proposal or proposals can be thoroughly discussed. While it has been stated that it has not been customary in the past to ask the opinions or consent of the governed by those governing in organizations other than political, social or religious, it has been found that the application of democratic principles to industrial organizations has never proven a failure. Recognition of the rights of the employee usually results in a quickened sense of obligation to the proprietorship, on the part of the employee. These general meetings should be continued until the form of organization has been agreed on, and until it has also been agreed in what manner the various topics which may be brought up in the future may be advantageously handled by committees.

Two-Fold Control.—The first departure from the strictly numerical-military type of manufacturing organization was the substitution of a two-fold control for the old-time single control of business and technique by the master-craftsman. This two-fold control

segregated the commercial from the manufacturing interests. Inasmuch as it came to pass that the proprietorship was usually held by persons familiar with the commercial or mercantile side, this type of organization developed the principle of specialization in the commercial side earlier than in the manufacturing side.

Development of the Principle of Specialization on the Commercial Side.—As the commercial side of business developed, there came to be recognized a more or less clearly defined science in finance and in selling, so that a further development showed itself in what Mr. Charles B. Going has designated as the three-column type of organization. In this type we have the activities divided into three groups, financial, manufacturing, and selling, with military-numerical control in the manufacturing group.

Further Sub-division of Control in the Commercial Division.—The recognition of the principle of specialization gradually brought about further sub-division of control in the commercial division until we have, as a standard frequently found, an organization in which the activities are divided into finance, correspondence, advertising, selling, accounting, purchasing and manufacturing, the last-named group still maintaining the military-numerical type of control.

Development of the Principle of Specialization on the Manufacturing Side.—With the development of the manufacturing side, we begin to have not only increased departmentalization by handicrafts, trades and types of machinery, but we have as a rule the division of machine-shop work into three classes, namely, tooling, group-assembly and final assembly or erecting. Next comes the recognition of the advantage of distinct departments of engineering works including power, light and heat, design of product, tool designing, stores, orders, shipping, cost and other factory accounts. In this type of organization we still have military-numerical control of all these departments without the development of the principle of functionalization.

Staff Principle Applied to Industry.—To a certain extent industrial establishments more or less unconsciously adopted some of the principles of staff control as developed in the more modern military organizations. Under the old military system of line officers only, the head of the line officers in the manufacturing side was the shop superintendent, or in the railway shop, the superintendent of motive power. The other line officers under these, *e. g.*, the shop foremen,

assistant foremen and gang leaders, had to carry on many and diverse functions which the modern industrial organization turns over to the staff officials or functional heads. The duties of the line officials thus become more and more those of supervision and leadership.

Type of Staff Organization to be Applied to Manufacturing Side of Industries.—It would be very difficult to set down a standard type of staff organization to apply to all industrial establishments. Mr. Emerson divides staff control to cover four groups: 1, men; 2, materials; 3, equipment; 4, methods and conditions. Mr. Taylor divides shop control among four types of executive functional heads whom he designates as 1, "gang boss;" 2, "speed boss;" 3, "inspector," and 4, "repair boss." Possibly an alternate acceptable in many cases would be the following proposed by the writer: 1, records; 2, materials; 3, plant, equipment and processes; 4, men. I shall briefly outline how the work of some of these functional staff departments is to be carried out.

Department of Records.—This department, like all of the staff departments, is a department which has no direct disciplinary control over any of the various departments which keep records. It is primarily a research and advisory department the results of whose investigations and whose recommendations are brought up at such meetings of department heads and others as may have been predetermined. It is the duty of the record department to see that records kept by various departments are not merely kept and stored away, but that from each set of records is secured a method of most effective analysis so that the records of the past may be compared with records of the present and conclusions may be drawn as to future action. The individuals engaged in this department must be experts in theory of accounts, the science of statistics, the art of graphical presentation and cost accounting. The tendencies and facts indicated by an analysis of the records must be brought forcibly to the attention of all individuals whose actions based on experience and intuition differ from the action indicated by an analysis of figures, records and statistics.

Department of Materials.—This department is advisory as to the fitness of materials as indicated by the technology of the various materials employed, with constant attention to cost reduction as well as the bettering of product.

Department of Plant, Equipment and Processes.—This department will consider: 1, routing; 2, scheduling; 3, motion and time studies; 4, preparation of instruction sheets and cards; 5, standardization of equipment. In all of these matters the work of the staff department ends with the adoption of the method. The routine work is carried on by men adapted to carry out routine work successfully. For instance, many of the decisions of this staff department are applied to the routine work of the planning or production department, which is not a staff department.

Routing.—This involves a study of the processes and product and the preparation of process maps for the various classes of product and determination of most predominant paths, together with floor spaces, weights, bulks, etc., involved, and recommendations as to rearrangements of equipment, and departments and proposals as to building modifications and extensions. It consists further in the designation of which department, machine and class of individuals are to perform the operations indicated by the instructions and the recording of such assignments in such a way that the scheduling department can, in consultation with the department of records, prepare means for enabling the planning or production department to have positive definite information as to the work ahead for each individual, machine and department.

Scheduling.—This consists of the determination of the manner in which all orders which are to be worked on by the various departments of the establishment are to be listed so as to determine their sequence and the methods of preparing a definite program in order that the shop may be provided by the production department with a daily schedule covering the sequence of all work for the day.

Motion and Time Studies.—Motion study consists of the analysis of each process into its ultimate simplest steps, and the elimination of useless or improper motions. This process is prerequisite to and more difficult than time study, which consists in the timing with a stop watch all the elements indicated by the motion study. Motion study research can be applied to accounting, designing and drafting as well as to mechanical and trade processes.

Preparing Instructions, Instruction Cards or Instruction Sheets.—The results of the researches of the routing, motion studies and time studies are to be taken up with the most skilled men in each process, these being the men usually detailed as demonstrators while the

motion and time study observations are being made; then detailed instructions are to be prepared which are to be the standard practice and are not to be departed from. Proposals for different steps or methods from the standard are to be encouraged and duly rewarded if they result in improvements. The instruction sheets are to be furnished to the production or planning department by the staff department on plant, equipment and processes in just the same manner that the designing department furnishes the detailed shop working drawings for the designed product.

Standardization of Equipment.—This covers all items other than those involving motion and time studies, such as tools, appliances and fixtures, although the expert in tooling processes may wish to cooperate with the motion and time study man or men.

Department of Men.—This staff department will consider: 1, hygiene and efficiency; 2, psychology and efficiency; 3, industrial education and efficiency; 4, development of loyalty, through social and religious activities.

Hygiene and Efficiency.—This branch will take up such matters as adequate provisions for pure and abundant drinking water, proper sanitary and toilet arrangements, first aid to the injured, eye-strain due to poor light, poorly directed light, glare, lassitude due to impure air or too dry air, discomfort due to temperature being too hot or too cold, together with installation of proper remedies and maintenance of proper conditions.

Psychology and Efficiency.—Careful researches must be made as to the presence of avoidable fatigue due to such factors as monotony of occupation, long maintenance of a single position, constant repetition of certain movements, lack of conversation, studies of temperaments of eligible candidates for promotion so as to give due consideration to these characteristics of future gang leaders, assistant foremen, foremen and other officials, since irascibility, lack of sympathy on the one hand and lack of stamina and vigorous discipline on the other hand, may seriously interfere with the efficiency of a newly appointed line officer.

Industrial Education.—This department not only provides for training of apprentices, but must provide means for each individual, so far as possible, for attaining greater efficiency. There must be systematic selection of each individual for his work and his systematic training for further development must be carefully planned. Devel-

oping the individual will automatically provide for the development of leaders. This department will handle such matters as shop library and suggestion system.

Development of Loyalty Through Social and Religious Activities.—Systematic and continuous efforts must be made to make each individual's work inspiring and to get each man interested in his work. The system of promotion must be such as to afford numerous examples whereby ambition may be preserved. Lectures on the history, processes and appliances of the company's product are a factor in the development of loyalty. An active work in the interests of good fellowship and social democracy will tend toward fair play for all and the avoidance of sharp practices in the dealings of employees with each other.

Carrying Into Effect the Above Principles.—It may be urged by many that they are doing all of the things above indicated, only they are not calling them by any fancy names or appointing special officers to attend to them. My answer to such is that they are not controlling their industries systematically or scientifically: There may be few industries large enough to require fully manned departments for all of the activities indicated. No matter how small the industry is, however, it must be analyzed minutely and the above principles applied in its organization. A department need not consist of many men. It may consist of but one man or one man may conduct several departments, but his specific duties, routine and responsibilities must be accurately determined and carried out, otherwise the industry is being carried on in a slipshod, inefficient manner; in other words, it is unorganized.

EDUCATIONAL TRAINING FOR INDUSTRIAL LIFE

A study of the most effective modern industrial organizations reveals an increasing tendency toward the interweaving or interlocking of the two divisions formerly designated as commercial and technical, respectively. In the filling of certain offices and the manning of certain departments it is necessary to find individuals who have an advanced knowledge of both commercial and technical matters. Our educational systems have segregated commercial from mechanical training in the past so that it is rare that we find a man who has had school or academic training in both branches.

Commercial Schools.—These have been of four classes, namely: 1, private business colleges, training in arithmetic, penmanship, book-keeping and shorthand; 2, commercial high schools, in which the usual high school curriculum was maintained with the exception of the introduction of book-keeping, stenography, commercial geography and industrial history; 3, undergraduate college courses in commerce, including courses in accounting, economics, commercial and industrial history, finance and business law, and 4, graduate college courses.

Technical Schools.—These have been of five classes, namely: 1, trade schools giving courses in specific trades with but little general education outside the trades; 2, technical schools with little or no preparatory entrance requirements other than a minimum age limit and teaching some science, mathematics and language in addition to the trades or mechanic arts; 3, technical high schools in which the usual high school curriculum is maintained with the exception of the introduction of mechanical drawing, wood-work and metal work; 4, undergraduate courses in engineering, industrial chemistry or textiles in which are taught sciences, mathematics, a little English and sometimes a little foreign language, the remainder of the course being devoted to drafting, design and technology, and 5, graduate courses in engineering in which the curriculum is usually similar to the undergraduate courses excepting that it is devoted exclusively to technology.

Industrial and Technical Branches in General Public Schools.—Of late years many public schools, owing to popular demand, have introduced options in commercial, mechanical, agricultural and household arts subjects, beginning usually in the high schools and extending the work downward into the grades where instruction is frequently given in plastic, textile, book-making, graphic and mechanic arts.

"Vocational" and "Continuation" Schools.—The term "vocational" education has been used to designate the immediate bread-and-butter type of school. Massachusetts has by law defined the term to designate "any education the controlling purpose of which is to fit for profitable employment." The same law defines "industrial education" as that form of vocational education which fits for the trades, crafts and manufacturing pursuits including the occupations of girls and women carried on in workshops. It further defines

"continuation" schools as schools for persons giving a part of their time to profitable employment and receiving, in a part-time school instruction complementary to the practical work carried on in such employment.

Distinction Between Vocational and Manual Arts Work as Taught in Public Schools.—The term "Manual Arts" has been used by some educators to distinguish between such manual instruction as they considered of a general cultural value irrespective of the future occupation of the individual and vocational instruction, preparing for profitable employment.

Failure of All of the Above Conceptions to Coordinate Commercial, Economic and Technical Fields.—In view of the development of the modern industrial organization it is apparent that as we pass along the scales of advanced responsibility in the various line and staff departments the individuals occupying the posts of advanced responsibility must have a knowledge of economics, logic, psychology and theory of accounts, whether their occupation is concerned more particularly with the commercial or with the technical side. Even workers in the ranks would think and act far more rationally in their schemes for self-betterment and collective bargaining if they had received some elementary instruction in principles of economics adapted to their capacity of understanding.

Proposed Method to Coordinate These Fields in the Lower Schools.—Instead of having distinct directors or assistant superintendents of state instruction in large cities in charge respectively of commercial education, manual training and vocational education, these various branches should in the matter of central control be under the headship of a single assistant superintendent. Although the Massachusetts law, above cited, limits the term "industrial education" in its scope so as to designate it as a sort of sub-division of vocational education which fits for trades, handicrafts and manufacturing, it is nevertheless true that the general acceptance of the term "industrial education" is more inclusive, and that such an assistant superintendent might be designated as in charge of industrial and commercial education. It would be the duty of such assistant superintendent to see that the instruction given coordinated commercial and technical branches and that all courses of instruction included such graded instruction in economics with later such selected portions of logic and psychology as would further a clear understanding of labor and industrial problems.

Proposed Method of Coordination in Colleges and Universities.—

College courses in technology should be made to include consecutive work in such branches as industrial history, history of commerce, finance, transportation, principles of economics, theory of accounts, logic, psychology, business law and advanced industrial economics. These branches should not be taught before or after the student's work in technology but simultaneous with such work even if the course required a fifth year. I would designate such courses as courses in industrial engineering to distinguish them from the strictly technical courses. Men trained in such courses would be admirably prepared for the staff positions open in the modern industrial organization. I would not have these courses under the jurisdiction of departments or schools of finance or commerce, although some of the branches would be selected from branches taught by such departments. They should be under the direction of a department head who had received technical training and who had had the benefit of association with a modern industrial organization as well as some training in the broader economic and liberal studies proposed to be taught the students in his course. In my own experience as a consulting expert in installing factory systems I have had occasion to test college graduates from various institutions. I have put graduates from college courses in business administration side by side with graduates from courses in engineering. While the latter showed a remarkable lack of business principles, economics and accounting, yet even with this handicap they were better adapted to filling positions in such factory departments as planning, tracing, motion and time study and cost departments than graduates of business and commercial courses whose ignorance of engineering and manufacturing methods was a greater disadvantage to them than the engineering school student's lack of knowledge of business practice. Most of the engineering school graduates had spent one or more summers in shops and had imbibed what is known as the shop atmosphere, while the commercial school graduates seemed to think more of high finance and disliked the grease and dirt of the shops. A combination of the two types would have been most desirable and is really necessary with the modern industrial organization.

INDUSTRIAL PEACE FROM THE STANDPOINT OF A TRADE UNIONIST

BY JOHN GOLDEN,
President, United Textile Workers of America, Fall River, Mass.

Industrial peace cannot even be hoped for where collective bargaining is denied to the organized wage-workers, or where vast numbers of unorganized workers prevail in any industry. The last ten years have witnessed what might be termed a racial revolution in the composition of help in many great industries. This is perhaps as much in evidence in the textile industry as in any other of our large industries. Forty years ago the employees were largely composed of operatives who had emigrated from Great Britain: English, Irish, Scotch and Welsh, with a dash of native-born Americans, made up the help in the cotton and woolen mills, silk mills being very rare at that period. After a while came the French Canadian, lured by the promise of a steady weekly wage. This class of operative was of a somewhat migratory kind, many of them remaining only long enough to accumulate enough money to purchase a farm in their native country. As time went on they began to assimilate our American ideas and customs, until to-day there is little or no difference between the manners and mode of living of English-speaking and French Canadian textile workers.

The English-speaking mill workers brought with them, among their many British traits, that of trade unionism fostered and practiced by their forefathers in spite of the bitter opposition and at times cruel persecution of the old-time mill master who looked upon a trade union as a criminal attempt to destroy his business, and treated it accordingly. As the French Canadians became more Americanized, a tendency which quickly evinced itself as the first crop of children began to attain manhood and womanhood, they also joined in with the English-speaking wage-workers and became active in the trade union movement. Then came the struggle for more sanitary conditions under which to work and live, and for higher wages; strikes and lockouts followed, but steady progress was being made irrespective of how these strikes or lockouts ended

for the time being. Hours of labor were reduced, factory inspection was established and wages were raised whenever and wherever the opportunity presented itself. As the textile industry grew, more operatives were needed, and while some improvements had certainly taken place which made the labor in the mills rather lighter than of yore, there was still little inducement for parents to put their children in the mills, and many a sacrifice was made, and many an anxious thought given to making it possible for John to be kept out of the spinning-room and Mary kept from the life of a weaver. Then started the movement that brought a stream of men, women and children from Continental Europe. Southern Europe was scoured, and to-day our textile mills are peopled by thousands upon thousands of men, women and children who never saw a textile mill before coming to this country, who cannot speak a word of our language, who, in the beginning, were only too willing to work for whatever wages they could get, and were contented to live under almost any kind of conditions. They knew nothing of organization; trade unions were something beyond their power of understanding; hence the work started and carried along by the pioneers of the textile industry, that of raising the whole standard of this particular industry, was halted. And with the exploitation of the foreign-speaking operatives which became quite common on account of their lack of understanding of our American customs, in some instances the ground gained through the many struggles of the English-speaking operatives was almost entirely lost, and conditions became worse than ever.

What does all this mean? Where is it all to end? What is going to be its effect on the industrial peace of the future? While I have used the textile industry as one illustration, everything that I have said in regard to this particular industry applies to many other of our large industries. The doors of immigration thrown wide open to the desirable and the undesirable, dumped down by thousands in one given spot, herded together sometimes under the most miserable and un-American conditions, used only for what energy they have left, not a thought given towards educating them even in the slightest degree into some understanding of our American institutions and our American ideals, an easy prey for the teachings of the anarchist and the demagogue, their minds and their brains fed and fired by an unlimited supply of literature that

only attempted to appeal to their passions and to their class consciousness; these hundreds of thousands of wage-workers are to-day slowly but surely awakening to a realization of their power of numbers. That they have been exploited goes without saying. Their exploitation has also helped to crush down others who, speaking our tongue, loyal to our American flag and our American institutions, must forsooth go down for the time being in the great industrial struggle. The revolt of the iron and steel workers at McKees Rocks, the strike of the miners of West Virginia, the great uprising of the textile workers in Lawrence, all with their accompaniment of lawlessness and bloodshed, are symptomatic of the conditions of the times. Passions have been fired by the tongues of men who would tear down "Old Glory" to-morrow and flaunt the red flag of revolution from the same flagpole. We have yet heard only the rumblings of what may follow unless something be quickly and effectually done to secure for the wage-worker, whether he be born under our flag or any other flag, what he is entitled to: a fair return for labor performed, and a guarantee against exploitation by those who have induced him to come to our shores.

The trade union movement has done much to bring this about. That it has not done more is because every step it has taken and every effort it has made to elevate the standard of the wage-worker in any of our industries has been hampered, opposed and antagonized by those representing the capitalistic end; and on many occasions aided and helped considerably by a certain portion of our body politic, men and women of peculiar thought, who, while ostensibly aiming to wipe out capitalism, breed distrust, suspicion and discord among the ranks of the wage-workers to an extent that prevents real organization that wrongs may be righted and the wage-worker come into his own.

The lying tongue of the revolutionist and the demagogue is never silent in its work of poisoning the mind of the foreigner when he reaches our shores against the men and women in the labor movement, whose whole lives have been and are being spent in the work of uplifting the condition of the toilers. There can be only one of two possible endings to this great industrial unrest and revolt: we shall either have organization of wage-workers under safe, sane and law-abiding leadership, which believes in the abolition of all forms of involuntary servitude, in the principle of collective bargaining,

mediation and arbitration; or we shall have organization that preaches class hatred and direct action, and practices sabotage and syndicalism.

The trade union movement stands to-day where it has always stood, and where it will stand in the future, for the uplift of the man who toils; for shorter hours of labor, that more time may be given for rest, recreation and education; for the abolition of child labor, that we may have a more vigorous manhood and a more healthy motherhood; for a wage that will guarantee a life worth living and enough to spare for old age; for obedience to our laws with the legal and moral right to protest when such laws become oppressive or curtail our God-given right of free speech and free press; for the right to organize and for the right to strike when all honorable effort has failed of a peaceful settlement. When these principles are fully recognized by all the people, and when all employers get away from the idea of being the embodiment of "divine right," and recognize the right of an employee either singly or collectively to have a say as to what conditions he shall labor under and for what wages he shall work; when, in a word, the Brotherhood of Man and the Fatherhood of God are fully and freely recognized by all, then, and not until then, may we even dream of Industrial Peace.

BOOK DEPARTMENT

NOTES

Brown, Arthur J. *The Chinese Revolution.* Pp. x, 217. Price \$0.75. New York: Student Volunteer Movement, 1912.

Not the Chinese revolution in its narrower sense—a series of plots and campaigns—is the subject Mr. Brown sketches, but the larger movement. This has been slow in developing, affects the entire Chinese body politic and therefore is not to be turned back even if the present experiment in republican government fails.

Four chief causes explain the outbreak against the former government. The one most often cited, the attempt of the government to nationalize the railways, is the least important. It was true that this gave an opportunity for protest by the provincial states rights party, but it was the occasion rather than the cause of the revolution. More fundamental were the distressing economic conditions caused by the pneumonic plague in Manchuria and the terrible floods and droughts which brought 3,000,000 of the people to starvation's door. The hatred of the Manchus and, most important, the modern spirit, especially as interpreted by the Christian work of the missionaries, was a leaven which worked upon the whole people.

The author next shows us the people and civilization of China. He reminds us of the enormous size of the country and of the population. Shantung has the size of Missouri, but more than one-third as many people as the United States; Chih-li, as large as Illinois, has 27,990,871 people. Next a review of Chinese social and intellectual characteristics is given, drawn chiefly from the author's former work, "China;" then a picture of the new industrial China; the recent moves by the great powers against Chinese sovereignty with the consequent distrust of the foreigner. The author believes that constructive Christianity is the force which must be relied upon to heal China's internal weaknesses and make her strong against foreign aggression.

One short chapter describes the constitutional changes brought by the revolution and the new government. The latter portion of the book is given to favorable estimates of Yuan Shih Kai and Sun Yat Sen, "the leaders of the new China." Mr. Brown's book contains little that is new to the student of Chinese affairs, but it is an excellent review of the conditions of present China for the general reader.

The Catholic Encyclopedia. Volume xiv. Pp. xv, 800. Price \$6.00. New York: Robert Appleton Company, 1912.

Choate, Joseph H. *American Addresses.* Pp. xix, 360. Price \$2.00. New York: Century Company, 1911.

Though falling somewhat short of the volume containing "Abraham Lincoln and Other Addresses" in charm of style and fascination of themes, Mr. Choate's "American Addresses," is a most delightful book. Mr. Choate's patriotic opti-

mism, his broad outlook over the affairs of men and nations, his genial wit and his mastery of expression combine to place him in the first rank of speakers and writers. The addresses delivered at various times from 1864 to 1910, deal with many topics and were prepared for a large variety of occasions. The longest, and one of the exceptionally thoughtful addresses is the one on "Trial By Jury," delivered before the American Bar Association in 1898. It merits careful consideration to-day, when the functions of the courts and the methods of judicial procedure are receiving attention.

Cohen, A. *The Declaration of London.* Pp. 183. Price, \$2.00. New York: George H. Doran & Co., 1911.

Mr. Cohen's volume contains his lecture on the "Declaration of London" given at University College of the University of London, covering fifty-seven pages and an appendix of the text of the declaration with the general report and defense offered to the naval conference by the drafting committee. The essay is one of the best summaries which has appeared. The document is criticised from the point of view of the English navy, but the argument is always searching and fair. Mr. Cohen believes the criticism to which the agreement was subjected in Parliament unfair, and gives cogent reasons why the restrictions on the shipment of conditional contraband do not constitute a menace to the safety of England—the chief contention of the English opponents of the convention. He gives high praise to Mr. Renault's report which accompanied the declaration, and favors a reservation in the acts ratifying it, which shall incorporate Mr. Renault's explanations and definitions as a part of the agreement. The student of international law and affairs can not afford to neglect the author's trenchant discussion.

Colby, Frank Moore (Ed.). *The New International Year Book, 1911.* Pp. 808. Price \$5.00. New York: Dodd, Mead & Co., 1912.

Coulomb, C. A. *The Administration of the English Borders during the Reign of Elizabeth.* Pp. 136. Price \$1.50. New York: D. Appleton & Co.

Deiser, G. F., and Johnson, F. W. *Claims: Fixing Their Values.* Pp. ix, 158. Price \$2.00. New York: McGraw-Hill Book Company, 1911.

The authors of this book have had wide experience in handling damage claims against public service corporations as counsel and general claim agent, respectively, of the Philadelphia Rapid Transit Company. The book embodying the results of this experience is an excellent work which will be of great value not only to public service corporations in training employees in the claim department, but also will be found of the greatest assistance to attorneys in handling damage cases.

Written largely from a non-legal standpoint, and emphasizing the practical side of the damage question, this work must be regarded as a supplement to the many text-books on damages, negligence and other kindred subjects. The chapters dealing with the preparation of cases for trial, the nature and extent of injuries sustained, the analysis of the facts of the occurrence, facts influencing questions of settlement, character and strength of evidence, and facts in mitigation or enhancement of damages are especially valuable.

Doherty, Philip J. *The Liability of Railroads to Interstate Employees.* Pp. 371. Price \$3.00. Boston: Little, Brown & Co., 1911.

The law of the liability of railroads to interstate employees is systematically though rather briefly treated in the volume by Mr. Doherty. The volume opens with an account of the acts of 1908 and 1910; subsequent chapters in the first part of the book consider the legal meaning of the different parts of the law. Part two of the volume discusses the question of the constitutionality of the act of 1908 and deals particularly with the powers of congress to regulate the relations between master and servant, the limitation of the freedom of contract and with related questions. Part three of the volume considers briefly the safety appliance acts.

Dougherty, J. Hampden. *Power of Federal Judiciary Over Legislation.* Pp. viii, 125. Price \$1.00. New York: G. P. Putnam's Sons, 1912.

Dunlop, J., and Denman, R. D. *English Apprenticeship and Child Labor—A History.* Pp. 390. Price \$3.00. New York: Macmillan Company, 1912.

Fisher, Irving. *Elementary Principles of Economics.* Pp. xxviii, 531. Price \$2.00. New York: Macmillan Company, 1912.

Haines Lynn. *The Minnesota Legislature of 1911.* Pp. 128. Bethesda, Md.: The Author, 1911.

The author dedicates his work to "The Progressives of Minnesota." He states that the writing of the book was "made difficult by the masks which men wore." In half the crucial events of the session 'the voice was Jacob's, but the hands were the hands of Esau.'" He gives in detail the measures by which, "led by the corrupt brewery combine, all the special interests accomplished the defeat of every vital reform affecting the corporations, save one." A partial list of defeated reforms includes: 1, The initiative and referendum; 2, the Sulerud constitutional amendment bill; 3, the recall; 4, woman's suffrage; 5, the Oregon plan of a corrupt practices act, with publicity pamphlet; 6, extension of the primary to state officers; 7, selection of presidential delegates by popular vote; 8, employers' liability act; 9, civil service; and 10, the income tax.

The volume is of value to all those who are endeavoring to cut the dry rot out of their conceptions of legislatures and of the way our governments are actually run. His descriptions of the third house, of senate patronage parasites, etc., should be read by all interested in fair government. Unquestionably such a pamphlet is bound to be of tremendous influence in guiding and influencing public opinion.

Haines, Lynn. *The Senate from 1907 to 1912.* Pp. 63. Price \$0.50. Bethesda, Md.: The Author, 1912.

This closely printed pamphlet, dedicated "to the men and women who see beyond the present controversy of progressives and reactionaries," is the "story of the stewardship of those United States senators whose terms expire March third, nineteen thirteen." It succinctly states the history of the senate from 1907, when it contained 61 republicans and 31 democrats (a nomenclature which, the author says, is wholly meaningless), of whom 12 were progressives and 80 were

reactionaries, to 1912 when there were 37 reactionary and 12 progressive republicans, and 23 reactionary and 18 progressive democrats. The 30 senators about whom this history is particularly written include 13 reactionary and 4 progressive republicans, and 10 reactionary and 3 progressive democrats. In the four big battles of this period, those over the Aldrich Currency Scheme, the Payne-Aldrich Tariff Law, the Taft-Wickersham Railroad Bills and Canadian Reciprocity, and other similar engagements, the author gives the votes revealing the alliance between the "Eastern stand-patters" and the "Bourbon democrats of the South," and the unity of action, as the author sees it, in the "oligarchy of the senate."

Honey, S. R. *The Referendum Among the English.* Pp. xxxv, 114. Price \$1.00. New York: Macmillan Company, 1912.

It appears that this book was written for the enlightenment of the English as to referenda in the United States, with the hope that the author may "set forth enough of the principles of that system (the referendum) and of its applicability to the political conditions of those States to enable an Englishman of intelligence to discover conditions in the English government to which the principles are applicable and to realize that there are no considerable difficulties in the path of its application." At the most, however, the book would lead only to further inquiries. From the contents one would judge that the only sources used in the preparation of the book were Bryce's "American Commonwealth" and the "New York World Almanac," together with some votes on constitutional questions selected from Thorpe's "American Charters, Constitutions and Organic Laws." The votes are given on certain propositions submitted to the people in Massachusetts, New Hampshire, Rhode Island and Connecticut. The book is of no value to students in the United States and of doubtful value to English students.

Horton, R. F. *National Ideals and Race Regeneration.* Pp. 57. **Scharlieb, Mary.** *Womanhood and Race Regeneration.* Pp. 54. **Thomson, J. A., and Geddes, P.** *Problems of Sex.* Pp. 52. Price 50 cents each. New York: Moffat, Yard & Co., 1912.

Huff, C. L. *Huff's Talks on Real Salesmanship.* Pp. 78. Price \$1.00. Philadelphia: The Author, 1912.

This little book is fresh from the experience of a man who knows salesmanship and who has carried his experience to the point of practical generalization. The treatment of successive themes shows keen observation based on knowledge of human nature; the style is simple and smooth flowing, and the drift of interpretation and practical suggestion is refreshing in its helpful optimism.

Hungerford, Edward. *The Modern Railroad.* Pp. xxi, 476. Price \$1.75. Chicago: A. C. McClurg & Co., 1911.

A popular book treating of the history of railroads and describing how they are operated. The author endeavors to cover the whole railroad transportation service in a popular and entertaining way. The volume is necessarily superficial and is intended for the general reader rather than for special students of transportation.

Isaacs, Abram S. *What is Judaism?* Pp. x, 206. Price \$1.25. New York: G. P. Putnam's Sons, 1912.

The book consists of fifteen essays or papers previously published as magazine articles: *What is Judaism?* *The Jew and the Currents of his Age.* *The Jew in the United States.* *The Jew and the World.* *Has Judaism a Future?* *The Jewish Home.* *What is Jewish History?* *What is Jewish Literature?* *Is Judaism Necessary To-day?* *The Talmud in History.* *What is the Cabala?* *Stories from the Rabbis.* *What makes the Jew?* *The Story of the Synagogue.* *A New Field for Religion.* In so far as a knowledge of Jewish life and history, literature and institutions in one phase or another is requisite for an understanding of Judaism, the title of the book which is borrowed from the first paper may be said to be applicable to the whole collection, while in a stricter sense only a few of the subsequent chapters carry on the subject of the first. Still there runs through them all a unity of purpose and of thought. The author believes that Judaism, the Judaism that survived the birth of Christianity, is little known and much misunderstood. To make the essence of the Jewish faith better known and appreciated is the avowed purpose of the essayist. Lucidity of style and aptness of phrase, joined to a creditable mastery of the subject, mark the execution of the self-imposed task. The author never wearies of giving expression to the thought that Judaism is a simple and rational system of belief; that it has shown capacity for adjustment to the diversified conditions of time and clime; that in America the Synagogue works side by side with the Church in amicable neighborliness for the betterment of mankind. When the author accepts cosmopolitanism as the goal of state evolution, and looks for a humanitarian religion which will absorb the positive religions of to-day, he is, I fear, repeating the antiquated notions of the *illuminati* of eighteenth century fame. To-day we know that variation of types is the law of creative energy, that differentiation marks the highest developed society, and that not uniformity, but unity through diversity, is the goal toward which mankind is striving. The Synagogue may learn from the Church and the Church from the Synagogue, but they will not be merged in a nondescript humanitarianism.

Judson, Frederick N. *The Law of Interstate Commerce and Its Federal Regulation.* (Second edition.) Pp. xxiv, 805. Price \$6.50. Chicago: T. H. Flood & Co., 1912.

The new and enlarged edition of Judson's work on interstate commerce was made necessary by the legislation that has been enacted since 1906. The Hepburn act, the Mann-Elkins act, and other legislation, as well as the decisions of the courts in the enforcement of railway legislation and the Sherman Anti-trust act have added very largely to the law of interstate commerce during the past seven years. Mr. Judson's work is so well known to lawyers and lay students of transportation that any detailed review of the volume is unnecessary. It is an indispensable part of any library upon transportation.

Keltie, J. Scott (Ed.). *The Statesman's Year-Book (1911).* Pp. lxxii, 1444. Price \$3.00. New York: Macmillan Company, 1911.

The forty-eighth annual issue of the *Statesman's Year-Book*, covering the year 1911, contains the usual fund of statistical information and other data. The

sections devoted to Turkey, China, Spain and certain other countries have been materially improved as compared with previous years. The returns of censuses taken during 1910 and 1911 in Germany, the United Kingdom, Austria, Spain, Switzerland, Norway, Bulgaria and the United States, moreover, became available and enabled the editors to present detailed statistical data for these countries. In a volume covering so wide an area specific errors are likely to appear, as for instance the operating statistics of the Western Union Telegraph Company and the Postal Telegraph Company are confused. But the Year-Book is as usual a work of commendable general accuracy.

King, W. I. *The Elements of Statistical Method.* Pp. xvi, 250. Price \$1.50. New York: Macmillan Company, 1912.

In the preface the author declares his purpose, "to furnish a simple text in statistical method for the benefit of those students, economists, administrative officials, writers, or other members of the educated public who desire a general knowledge of the more elementary processes involved in a scientific study, analysis, and use of large masses of numerical data." Recognizing that few persons who desire to make practical use of statistics are expert mathematicians, the author attempts to present only the very simple theorems on which statistical method is based. There is certainly a place for such a book.

The text is divided into four parts, the first of which briefly sketches the historical development of statistics and attempts a definition of the science and a statement of the uses of statistics. Part II deals with the principles and methods of gathering the material, placing emphasis upon the fundamental importance of understanding the nature of the problems to be solved before attempting to plan the investigation, or to make out schedules of inquiry, or to fix statistical units. Part III is devoted to the methods of analyzing the material gathered. This part covers the usual topics of tabulation, frequency tables, averages, and dispersion about the average, and closes with a discussion of methods of comparison, by which relations are made clear and cause and effect are established. Correlation and the measure of correlation are explained and illustrated. This is the more difficult and more mathematical part of statistical science and the author seems to approach it from the point of view of a summary of principles and methods rather than from the point of view of the beginning student who must first get a clear notion of the meaning and application of comparison and correlation, as he works with the concrete data of social and economic life. The method of exposition requires space but it would seem to be essential for the beginner if he is to understand that, above all else, common sense and discrimination must be exercised in dealing with numerical data. Mere formulæ are of little use to the beginner except to make definite what has been explained. For the advanced student the case is different, but the author is not appealing to the advanced student. In the entire second half of the book too much of the material is presented in a summary and rigid form. Too many formulæ are given in detail, where the same space devoted to concrete exposition would have been much more enlightening to the beginner and the practical worker with statistics.

The book is most useful but fails of its broader purpose, stated in the preface. For the beginner, as a text, it will require careful explanation and illustration, which, no doubt, the author presents in his own classes.

Kuhn, Arthur K. *A Comparative Study of the Law of Corporations.* Pp. 173.
New York: Longmans, Green & Co., 1912.

Dr. Kuhn's work is well worth perusal both by the student of the corporation problem and of corporation law, for it contains valuable information for both. The book is divided into nine chapters. The first three of these—I. Group Forms and Corporate Types in Ancient Times; II. Group Forms and Corporate Types in the Middle Ages, and III. The Origin and Development of Corporations in England—are of an introductory character and chiefly of historical interest. Three of the other six chapters are devoted to the protection of creditors and shareholders in Continental Europe discussed under the heads of Organization, Operation and Dissolution, respectively. The remaining three discuss legislation and reform in England and America under the same heading, the chapter on Legislation and Reform in England and America—Organization, following that of Protection of Creditors and Shareholders in Continental Europe—Organization, and so on with the other four chapters. Each of the three chapters entitled Protection of Creditors and Shareholders, etc., is subdivided into five sections, one of which deals with the law of each of the five countries, France, Germany Italy, Spain and Switzerland. The other three chapters discuss, as their titles indicate, the English and American phases of the subject. A good bibliography has been inserted after the table of contents.

Like practically all of the Columbia University Studies, the volume shows painstaking and careful research. The author has made many interesting comparisons and pointed out advantages and disadvantages in the provisions of the law in different countries. In many places admirable criticisms and suggestions are made. The book is unquestionably a valuable addition to corporation literature. It is in no sense with the desire to detract from this value that the reviewer in fairness is compelled to say that in places the treatment appears cursory and altogether too brief. The subject is a large one and it is a matter of some regret that certain phases were not more adequately discussed.

Leake, P. D. *Depreciation and Wasting Assets.* Pp. xi, 195. Price \$3.50.
New York: Ronald Press Company, 1912.

The literature on the important subject of depreciation and the treatment of business accounts to provide for this item of loss has received an important addition through the little book of Mr. Leake, whose work in the past entitles him to rank as an authority upon this question. Although written in England, from which the illustrations are almost entirely drawn, yet the principles and conclusions can be applied with little or no change to American problems and conditions. The chapters dealing with the measuring of depreciation of an industrial plant, the calculation of depreciation on natural raw materials, on terminable concessions, copyrights, patent rights, good will and trademarks are especially valuable.

McConnel, Roy M. *Criminal Responsibility and Social Constraint.* Pp. vi, 339.
Price \$1.50. New York: Charles Scribner's Sons, 1912.

Mundy, Floyd W. *The Earning Power of Railroads, 1912.* Pp. 526. Price \$2.50.
New York: Moody's Magazine Book Department, 1912.

The 1912 edition of Mundy's "Earning Power of Railroads" follows the plan of

previous editions, the volume becoming larger year by year. There is no other source of information so compact and useful as is this volume, which discusses the income account of 154 railroads whose operations cover all but 15,000 miles of the entire railway line mileage in the United States.

Nolen, John. *Replanning Small Cities.* Pp. 218. Price \$2.50. New York: B. W. Huebsch, 1912.

Mr. Nolen in his new book has chosen the right sub-title "Six Typical Studies"—so varied and representative are the cities chosen. The studies also show that they were commissions from the communities in question made for actual execution. Plans are given, showing proposed changes, and the recommendations for improvements are detailed and specific. General principles of city planning are, however, indicated in each case. There is also an introduction which treats of the subject as a whole, and a concluding article, applying the general truth to the preceding studies. An appendix is added, containing the text of suggestive city planning legislation, a bibliography and other general information.

The book has thus a three-fold purpose and value:—it is a popular statement of the general principles of city planning, with illustrations and applications; it is a collection of studies of interest to the special student; and it is a solution of real problems of value to the practical city planner. Unfortunately in one or two cases, the plans, so essential to all three classes of readers, are too fine and intricate to be of the same value as the rest.

Page, Thomas Nelson. *Robert E. Lee, Man and Soldier.* Pp. 734. Price \$2.50. New York: Charles Scribner's Sons, 1911.

Mr. Page states that he started out to write a second and enlarged edition of the little volume which he published a few years ago upon "Robert E. Lee, the Southerner," and that his work was so expanded as to result in the present biography of "Lee, Man and Soldier." This explains, doubtless, the general tone of the work which suffers from the fact that the author felt called upon to take sides as between the South and the North. In other words, Mr. Page does not have the impartial and judicial attitude that Robert E. Lee had. On the whole, however, the book is admirable. It is written with the charm that one would expect to find in the writings of Mr. Page; it is never dull even in the discussion of campaigns. The early chapters deal with the life of Mr. Lee before the war, but the larger part of the volume is devoted to details of the campaigns of the Army of Virginia. The picture of Lee after the war is admirably drawn, and one might wish that the later chapters of the book had been expanded so as to bring out more fully the events of the five years following the great Civil War and of Lee's relations to them.

Parkhurst, F. A. *Applied Methods of Scientific Management.* Pp. xii, 325. Price \$2.00. New York: John Wiley & Sons, 1912.

Paxson, F. L. *The Civil War.* Pp. 256. Price \$0.50. New York: Henry Holt & Co., 1912.

The new method of historical interpretation finds an excellent illustration in this little volume. The author is concerned less with the narration of events than with their explanation. If one is concerned with an accurate description

of the details of battles and of campaigns this book will not satisfy his demand, but if he is interested in the psychological forces which were the product of environmental conditions and which made an otherwise unnecessary conflict inevitable, he will find it interesting and instructive reading. The author declares that "the South would of herself have discarded slavery in another generation; that the new nationalism would have come about without the Civil War, but the South was led into secession by causes which it could not control." It is this tracing of cause and effect; the interpretation of the incidents of the war that makes the book valuable. It is published in The Home University Library of Modern Knowledge and its price makes it accessible to a wide circle of readers.

Robinson, C. M. *The Width and Arrangement of Streets.* Pp. x, 199. Price \$2.00. New York: McGraw-Hill Book Company, 1911.

By the casual reader a book on the width and arrangement of streets would probably be dismissed, in advance, as a technical discussion of a small part of the field of city planning. In fact the streets cover from twenty-five to fifty per cent of the area of a modern city; are one of its largest investments and heaviest expenses; and a most important factor in shaping its growth and the life of its citizens. This Mr. Charles Mulford Robinson shows in his latest book. It is written for the public rather than the specialist. The author does not claim for it originality so much as that it is a statement of "the belief of the students of town and city planning in all nations which to-day are considering the subject."

The legal and administrative sides of city planning are less closely related to the thesis of the book, and less fully and adequately treated than the rest. Nor is it safe to refer to Pennsylvania law and method as precedents, as is done on page 78. In that state the courts have held that streets may be laid out on the city plan without provision for compensation until the land is taken and without payment for improvements made meanwhile; but in all the other states in which the question has arisen, such statutes have been held to be a taking without compensation and unconstitutional. Nevertheless, almost all that is said with regard to the use of building line statutes is thoroughly sound.

The book as a whole shows study, observation and appreciation of the best in modern city planning; it is written from the social point of view; it advocates real planning rather than rules of thumb; and, with its helpful plans and attractive illustrations, it not only should be but will be widely read.

Ross, Edward A. *Changing America.* Pp. 236. Price \$1.20. New York: The Century Company, 1912.

Savage, W. G. *Milk and the Public Health.* Pp. xviii, 459. Price \$3.25. New York: Macmillan Company, 1912.

Schirmacher, K. *The Modern Woman's Rights Movement.* Price \$1.50. Pp. xvi, 280. New York: Macmillan Company, 1912.

"The Modern Woman's Rights Movement" has been translated from the German of Dr. K. Schirmacher (2d edition) by Carl Conrad Eckhardt, Ph.D., instructor in history, University of Colorado. It purports to be the first book in English giving a history of the woman's rights movement in all countries of the world. "Oppression," says Dr. Schirmacher, "is opposed to human nature." Yet from

the remotest time man has tried to rule the one who should rightly be his comrade. Every protest against the law of might by which he has succeeded in dominating her is defined, therefore, as a "woman's rights movement." Although the scope of the book is broad, the field is carefully covered. The author begins with the Germanic countries, followed by the Romance countries, the Slavic and Balkan states, the Orient and the Far East, and finishes with a formal conclusion and an excellent index. The data are carefully presented in an easily available form, and the book translated into clear, idiomatic English. Dr. Schirmacher concludes that "the emancipation of woman is synonymous with the education of man."

Seligman, E. R. A. (Ed.). *The Social Evil.* Pp. xvii, 303. Price \$1.75. New York: G. P. Putnam's Sons, 1912.

Stanford, C. Thomas. *About Algeria.* Pp. 306. Price \$1.50. New York: John Lane Company, 1912.

Mr. Stanford's book on Algeria is an excellent piece of work. The description of the country and of the principal points of interest is well written and the volume is accompanied by an exceptionally artistic set of illustrations. The author was especially interested in Arab doorways and has reproduced some of the drawings of Mr. Thoroton. The volume will be appreciated by the large number of tourists annually visiting Algeria. It should be read by all tourists who contemplate making a trip through that country.

Sterne, Simon. *Railways in the United States.* Pp. xiii, 209. Price \$1.35. New York: G. P. Putnam's Sons, 1912.

The republication in book form of most of the more important papers and addresses of Simon Sterne will be appreciated by students of transportation. No publicist has ever written more clearly and correctly regarding the relations of railways to the state than Simon Sterne. His life work and his writings made a real contribution to the solution of the problem of railway regulation, and this small book, printed years after his death, will give to his writings a permanent place in available transportation literature.

The book includes chapters upon the history and political development of railways, upon legislation concerning railways in the United States, and upon the relations of railroads to the state.

Sreightoff, Frank H. *The Standard of Living Among the Industrial People of America.* Pp. xix, 196. Price \$1.00. Boston: Houghton, Mifflin Company, 1911.

The most recent studies on the standard of living are well summarized and popularized in this monograph. Beginning with a definition of the standard of living, which, by the way, is neither as clear nor as accurate as it might be, the author devotes chapters to Family Expenditures, Unemployment, Incomes, Housing, Food, Clothing, Thrift and Health. These chapters are excellent throughout. The student as well as the general reader will go to them for a succinct statement of the special problems involved. Charts, diagrams and statistical tables are used with telling effect.

Unfortunately, a similar excellence does not characterize the chapter on The Living Wage. Here the author cites the estimates made by Ryan and John

Mitchell, and tests their verity by the single case "of an intelligent man who works at odd jobs in Middletown, Connecticut." After presenting the data collected by this individual, the author writes "surely this is not a high estimate for a living wage—the estimate was very carefully made as a minimum and then reduced by \$60.00." "It is, then, conservative to set \$650 as the extreme low limit of the living wage in cities of the North, East, and West. Probably \$600 is high enough for the cities of the South. At this wage there can be no saving and a minimum of pleasure. Yet there are in the United States, at least five million industrial workmen who are earning \$600 or less a year." It does not require a trained statistician to detect the flagrant inadequacy of such a statement.

Certainly no one can seriously accept the religious peroration on pages 178 and 179. If these pages are skipped, however, the work as a whole (particularly chapters II to IX) represents a welcome contribution to the literature on living standards.

Talbert, E. L. *Opportunities in School and Industry for Children of the Stockyards District.* Pp. vi, 64. Chicago: University of Chicago Press, 1912.

Persons close to the facts have long suspected that a break existed between public education and wage earning. No more striking confirmation of this belief could be found than that appearing in Dr. Talbert's study. Though his problem is complicated by the presence of varied nationality, he has worked out a most interesting statement of the reasons why the children leave school. Of three hundred and thirty children who express their opinions, one hundred and ten reflected negatively on the school; while one hundred and seventy-one replied that lack of money was the prime cause of leaving school. How far child opinion may be trusted is an open question, but certainly the present study reveals a marked tendency on the part of both children and parents to distrust the efficacy of public education. The study contains some valuable data on the character of work and the wages of children leaving school.

Ward, Harry F. (Ed.). *Social Creed of the Churches.* Pp. 185. Price \$0.50. New York: Eaton & Mains, 1912.

This preliminary volume to a series of hand-books authorized by the Commission on the Church and Social Service of the Federal Council of the Churches of Christ in America reflects fully the emphasis now placed upon social religion. The little book, compiled in cooperation by a group of prominent ministers and laymen, is really a short text book in social economy. It discusses in a sane and conservative way, from the viewpoint of Christian democracy, an advanced social platform aimed at the elimination of the evils of our industrial civilization. This social creed takes exception to the conditions of child and woman labor, declares for a living wage for men, adequate protection from injury, old age, and "the hardships arising from the swift crises of industrial change;" it insists upon the prevention of poverty and "the most equitable division of the products of industry that can ultimately be devised,"—assuring to all the "opportunity for self-maintenance" and "that degree of leisure which is the condition of the highest human life."

Necessarily the treatment of each subject is brief,—but it is as well clear and straightforward, and an ample bibliography is provided at the end of each section.

The widespread use of such books as a basis for group discussion will help in the interpretation of social evils to those who need only to realize the crying needs of modern life to hasten and join the swelling ranks of the army of the common good. Certainly the adoption of a concrete programme by that institution which stands for the realization of the highest ideals in our community life marks an advance in constructive democracy. Many rejoice that at least, consciously and deliberately, the Church of Christ has entered the field of social endeavor to hasten the coming of His Kingdom.

REVIEWS

Beard, Charles A. *The Supreme Court and the Constitution.* Pp. 127. Price \$1.00. New York: Macmillan Company, 1912.

This splendid little volume of Professor Beard was written to answer the question, or at least to point out the methods for answering the question: "Did the framers of the federal constitution intend that the supreme court should pass upon the constitutionality of acts of congress?" He concludes (p. 51) that "we are justified in asserting that twenty-five members of the convention (of 1787) favored or at least accepted some form of *judicial control*." But the evidence he submits as to these twenty-five members includes not only their statements *during* the constitutional convention, but also their statements at any time *subsequent* thereto. Indeed, he feels that William Johnson, Robert Morris and George Washington favored judicial control and, by implication, the power of the supreme court to nullify congressional acts, because the two former voted for, and the last named signed, the *Judicial Act of 1789*! However, scrutiny of the evidence presented as to these twenty-five members, who, says Professor Beard, were the "leading members," reveals that, in terms of his own evidence, but eight of these twenty-five expressed, *during the constitutional convention*, any belief that the courts would have power to nullify congressional legislation. Therefore, his conclusion (p. 55) that "the opponents of judicial control must have been fully aware that most of the leading members regarded the nullification of constitutional laws as a normal function" is scarcely justifiable, as those members did not have the advantage of knowing at that time what the members of the convention might be thinking a few years thereafter.

Professor Beard says that "the accepted canons of historical criticism warrant the assumption that, when a legal proposition is before a law-making body and a considerable number of the supporters of that proposition definitely assert that it involves certain important and fundamental implications, and it is nevertheless approved by that body, without any protests worthy of mention, these implications must be deemed a part of that legal proposition when it becomes a law; provided, of course, that they are consistent with the letter and spirit of the instrument." To this assumption *per se* no one could object, but no proposi-

tion, "legal" or other, to confer directly upon the judiciary the power of passing upon the constitutionality of acts of Congress was submitted to the convention. The only proposition looking toward giving this power to the judiciary was the proposal to create a revisionary council, associating the leading judges with the executive, and giving this council power to nullify congressional laws. Yet this proposition was clearly defeated despite the fact that all those who favored judicial control seemed to have spoken and voted in its behalf. The opponents of judicial supremacy over congressional legislation might have concluded, therefore, that the friends of the measure would be outvoted in the convention and that the proposition would find no acceptance outside the convention, the latter assumption being clearly in accord with the history up to that time. Moreover, both the letter and spirit of the constitution looked toward equality of departments, not to the supremacy of one over the others. Professor Beard counts all those who favor an independent judicial department as in favor of the supremacy of the judicial department. The whole theory of the framers of the constitution hinged upon departmental equality. The judges, it was pointed out time and again, would have independence because of their position as "expositors of the laws." Said Wilson (Beard, p. 57): "The judges, as expositors of the laws, would have an opportunity of defending their constitutional rights." Madison's argument for the revisionary council was that it was "an auxiliary precaution in favor of the maxim" that "requires the great departments of power to be kept separate and distinct."

There is direct evidence in Professor Beard's book to show only that the idea of giving to the judiciary power to nullify congressional statutes was accepted by but eight of the fifty-five members, and nothing to show that the framers of the constitution intended to depart from the generally accepted conceptions as to the position of the judiciary at that time. A fair canon of criticism would be that, when a frame of government is being drawn up, the phrases and words therein used must be given the meaning current at the time, unless there is definite debate and definite assertion to prove that the framers specifically intended such phrases and words to have some other meaning. The constitution was framed, as were all of the state constitutions preceding it, on the belief that the three departments should be equal, not that two should be subordinate to the third. The "argument of silence" would therefore seem to be in favor of the proposition that the framers of the constitution did not intend to grant a position of pre-eminence to the judiciary. Judicial control, meaning the power of the judges to expound the laws in the way that they were then expounding them in England and in this country, and consonant with departmental equality, the framers no doubt intended to accept, but Professor Beard has failed to show that they intended to establish a new principle and give to the courts an unprecedented power. The book is by far the most valuable contribution that has yet been made to this intensely interesting subject. The author has pointed out the proper method of procedure, knowing full well that his work is not final but hoping that it will lead to definite and valuable discussions on the subject.

CLYDE L. KING.

University of Pennsylvania.

Breckinridge, Sophonisba P., and Abbott, Edith. *The Delinquent Child and the Home.* Pp. x, 355. Price \$2.00. New York: Charities Publication Committee, 1912.

This volume is a symposium on the Juvenile Court of Chicago. An able introduction by Miss Lathrop is followed by the work of the two authors. The appendices contain articles by Judge Mack and by Miss Grace Abbott, and the testimony of Judge Pickney defending the court.

"The study deals only with . . . the court in its relation to the families and homes from which the delinquent wards come" (p. 13). The court records from 1899-1909 form the basis of the study but intensive investigation of the boys before the court in 1903-4 and the inmates of the State Training School for Girls was also made. Over half of the boys had come before the court for stealing; eighty per cent of the girls because of danger to morals. Seventy per cent of the parents of these children were foreign born, and "nine-tenths of the delinquent girls and delinquent boys come from the homes of the poor" (p. 74). In more than one-third of the cases, the family was not normal. Viciousness or drunkenness of parents, overcrowded homes, the mixing of the children of various marriages, the lack of facilities for play, all these have their place as causes of delinquency. The conclusion of the authors is ". . . that the most important lesson to be learned from any study of the juvenile court in its relation to the delinquent child is that the only way of curing delinquency is to prevent it" (p. 177).

The appendices contain valuable reference material on the legal points and on the present status of the juvenile court movement.

This clear and scientific volume is a valuable contribution to the study of juvenile delinquency and is in itself a powerful defense of the juvenile court. It shows the promise of even greater usefulness in the institution, until, in the end, the court shall have destroyed the need of its own existence.

ALEXANDER FLEISHER.

Philadelphia, Pa.

Cecil, William G. *Changing China.* Pp. 342. Price \$2.00. New York: D. Appleton & Co., 1912.

It has frequently been recognized that the recent development of China through Western influence has resulted largely from a conjunction of seemingly incompatible agencies—the missionaries of the Gospel of Peace, who have led many Chinese to a knowledge of Western civilization, and the occidental plunderers organized in armies, who have compelled the adoption of Western methods in mere self-preservation. Thus there is, if not an alliance, at least, in some matters, a *modus vivendi*, between God and Satan.

Lord Gascoyne-Cecil describes this curious process, for the purpose of a warning as to its future course. He fears that the diabolical influence may soon prevail over the celestial. The fact that two civilizations blend, by whatever methods, is in itself, we are told, charged with grave peril. "The pleasing dream that you can arbitrarily select the good points of West and East and weave them into one is the very reverse of the truth. What naturally happens is the very

opposite. There is a tendency to preserve that which is bad and not which is good in two different systems of thought when they are united into one. The reason probably is that as the bad has its common origin in the wickedness of human nature, it belongs to both systems of thought, and therefore both the Chinaman and the Westerner meet on common ground when they meet in vice or vileness. On the other hand, the virtues of both are the result of cultivation resting on authorities which are not recognized by either" (pp. 37-8). Moral health, he continues, requires some spiritual influence—Japan, for example, has lost all real faith in the old religions and is "in a state, odious to the Western and Eastern alike, of being without moral guidance in this world" (p. 170). Already evil fiction is being translated from European languages into Chinese, and also "all the works which Western thought has produced against the Christian faith," and in favor of materialism. There is, however, an available Christian agency most potent for exercising a moral and religious influence—namely, the proposed great university, more advanced than any school now existing in China, and therefore permitting a Chinese student to remain in his own country. It should be jointly supported by different religious denominations, severally maintaining colleges for religious instruction, while the university would devote itself to secular instruction from a neutral standpoint. The whole book is in fact an argument for the "United Universities Scheme."

Even a person who gladly applauds this general purpose may dissent as to some links in the reasoning. For example, one of the most striking facts in all history is the process by which nations have borrowed from each other good rather than evil. One must be struck here, as in so many recent accounts of China, with the unfortunate practice of regarding as inherent in the character of the Chinese what has belonged to other nations generally at a similar stage of evolution. Thus Lord Cecil proves the "corruption" of Chinese life by reference to the disorderly monetary system of China, and by certain anecdotes of the cruelty of the Chinese, though that monetary chaos is not very different from that formerly existing in every European state, and an accusation of cruelty should come cautiously from the nation which burned Joan of Arc.

A. P. WINSTON.

Pearre, Maryland.

Dunn, Samuel O. *The American Transportation Question.* Pp. xi, 290. Price \$1.50. New York: D. Appleton & Co., 1912.

The transportation question, according to Mr. Dunn, the editor of "The Railway Age Gazette," has three mutually related factors—rates, services and financial results; and this question is vital to both the carrier and the public. The bases of rate making are, of course, fundamental considerations. The cost of the service and the value of the service as separate bases and as merged into each other receive a fair criticism. Mr. Dunn thinks that both bases must be used, though the value of the service should be the more influential. To say that most of the injustices in railway rates and services are due to the conditions that exist in commerce, industry and transportation, rather than to the intention of the carrier, and that the carriers must be allowed to cooperate with each other in order to eliminate these injustices, is to make a correct though unpopular state-

ment. To facilitate the elimination of these unjust discriminations in commodities, localities or persons, Mr. Dunn suggests, wisely we think, that the Interstate Commerce act and the Sherman act be so amended as to allow considerable cooperation between the carriers, and that the commission should prescribe the minimum rates as well as the maximum. The relation of the valuation of the railway plant to railway profits is admirably presented, and so is the subject of efficiency and economy. To allow the more efficiently managed railway the right to earn larger profits would, he thinks, tend to foster efficiency in railway management—a thing needed by the shippers. The chapters which treat of the railway's relation to the proposed inland waterways and which consider who shall regulate the railway operation are very suggestive and valuable. Mr. Dunn has made a strikingly valuable point in his analysis of the railway commissions, as to who the commissioners are, whether they are appointed or elected, and whether they are railway experts or partisan shippers or ordinary politicians.

The errors in the book are relatively few. The merits are important.

CHARLES L. RAPER.

University of North Carolina.

Garbett, C. F. *The Church and Modern Problems.* Pp. vii, 221. Price \$1.00.

New York: Longmans, Green & Co., 1911.

The attempt to state what should be the attitude of the Anglican Church to a round dozen of "the modern problems of religion, thought and action," within the compass of a little more than two hundred pages is no slight task, and considering the difficulties of the undertaking, it must be admitted that the author of *The Church and Modern Problems* has produced an interesting and useful book. The range of topics is wide; for the volume is a collection of lectures and addresses delivered, during a period of about two years, in the course of the author's ordinary parish work as a priest of the Church of England. Among the problems are such unrelated subjects as the Reunion of Christendom and Socialism, but a certain unity is given to the whole by the purpose of the book which is always to make clear the relation of the Church to the particular problem under discussion. Those who expect to find considerable space devoted to the duty of the Church in the present social and economic situation, the problems of which are engaging so large a share of public attention in England to-day, will be disappointed. The New Theology and certain aspects of modern philosophical and religious thought are considered at much length but the Church and Social Problems is disposed of in a single chapter, although it is but fair to add that some phases of the social question, such as Divorce and Temperance Reform, are separately dealt with.

The treatment of the topics is intentionally popular but always thoughtful. A loyal servant of the Church, the writer nevertheless tries to look facts squarely in the face and his conclusions upon the whole are tolerant and judicious. If the book represents the attitude which any influential number of the clergy of the Church of England are taking towards the religious and social questions of the day, one must believe that the Church is destined to function with yet greater power in the life of the English nation.

Union Settlement, New York.

GAYLORD S. WHITE.

Goldmark, Josephine. *Fatigue and Efficiency.* Pp. xvii, 591. Price \$3.50.
New York: Charities Publication Committee, 1912.

A keen analysis of the various factors in the fatigue problem together with a compendium of information regarding fatigue and its effects occupies the pages of this very useful book. In the five years during which she has been at work upon the problem of fatigue, Miss Goldmark has had an occasion to draw upon all of the authorities, native and foreign, who have contributed to the subject. The resultant material compiled and interpreted by one of the ablest of our social experts throws some side-lights on a problem which has been recently described as the most serious of all the serious problems which the people of the United States are at present confronting.

Fatigue is a poison generated in the body tissues in the form of waste chemical products. Although it has been generally supposed that the consumption of energy-yielding substance was responsible for fatigue, recent experiments with animals and with men have clearly demonstrated that fatigue is primarily the result of waste products rather than the destruction of body tissues. Since women have a high morbidity, especially in nervous diseases, the result of the presence of fatigue poison in the nerve centers shows itself with peculiar virulence in the female sex.

This modern theory of fatigue has been developed in conjunction with the increasing strain of modern industry. All modern industry which depends upon machinery for its rate of speed is being geared up to a higher and higher tension. The existence of industrial specialization means dreadful monotony. Hence, piece-work and overtime work add their painful influences to monotony and speeding-up, producing a type of industry well calculated to create fatigue poison.

The results of physical over-strain in industry are, Miss Goldmark indicates, exactly what might be expected. Women who engage in industrial occupations show a high infant mortality and a low birth-rate, which Miss Goldmark describes as "Race Degeneration." It is doubtful, however, whether the term may justifiably be used in this connection, since it is not at all clear that there is any causal relation between industrial fatigue and the decrease in stature which have accompanied the development of English industry.

In order that the burden of industry may not bear unduly upon the workers, it is desirable, Miss Goldmark insists, that a form of restriction be placed upon those industries which create fatigue. There are three ways in which these restrictions may be imposed. First, the employer may be led to see that more work can be done in eight than in ten hours. This viewpoint has led to a considerable change during the nineteenth century, lowering the number of hours required of industrial workers. The trend toward shorter hours, Miss Goldmark finds particularly apparent in the United States. Scientific management, if scientifically interpreted, will reduce the amount of energy expended in industrial operations to a point which will not over-fatigue the worker. In the third place, labor laws well enforced by competent factory inspectors may accomplish the reduction in overwork. In the case of labor laws, however, the courts must maintain a proper attitude toward the overwork problem if the laws themselves are to furnish an effective remedy.

Here ends the literary part of Miss Goldmark's work. She has succeeded in stating fairly and effectively one of the most difficult and important problems now confronting the people of the United States. A slight tendency to scientific terminology, and an occasional unjustifiable use of facts do not seriously detract from the excellence of the work which Miss Goldmark has done.

The remainder of the book contains, in summary form, the world's experience upon which legislation limiting the hours of labor for women is based. Any one interested in the technical side of fatigue, and in the application of fatigue theories to industry will find in this work a generous source of information.

SCOTT NEARING.

University of Pennsylvania.

Gonner, E. C. K. *Common Land and Inclosure.* Pp. xxx, 461. Price \$4.00. New York: Macmillan Company, 1912.

In literature on inclosure, until lately, a sharp distinction was drawn between the inclosures of the fifteenth and sixteenth centuries and the inclosure movement of the eighteenth and nineteenth centuries. Professsr Gay pointed out the error of this view, and Miss Leonard and Professor Gonner have already developed the thesis by studies of inclosure in the seventeenth century. This new conception of one continuous inclosure movement is the theme of Professor Gonner's book. The earlier and later movements are brought within the scope of comprehensive treatment, partly by the historical continuity in the seventeenth century, partly by an underlying unity in the relation of inclosure to the different types of soil. The apparently sharp distinction between inclosure by agreement and by private act is shown to be overdrawn, so that there is a real continuity even in the method of inclosure where the break seemed most distinct.

Inclosure by agreement in chancery became important in the seventeenth century. It was, at first, merely a device to secure an authoritative record of agreements entered into without any legal compulsion. Lengthy legal proceedings easily became a menace designed to procure assent, and collusive proceedings might easily make this element of compulsion very real to the persons standing out against a voluntary agreement. The earlier private acts were similar in effect. They were essentially official registrations of private agreements, but they afforded some opportunities for coercion. The transition from the confirmatory act to the act for proceeding by appointment by commissioners was not abrupt. Acts of this later type are to be found in the early part of the century, but it is only in the latter half that they become predominant.

The establishment of a relation between inclosure and physiography is perhaps the most distinctive feature of Professor Gonner's book. This mode of approach throws some new light on the controversy between Professor Gay and Mr. Leadham in regard to the nature of sixteenth century inclosure. It is interesting to note that Professor Gonner agrees in the main with Professor Gay. Inclosure was indeed undertaken with a view to arable farming, but it was "a not very frequent result, rather than a constant consequence and aim." The significance and suggestiveness of this method of approach lie, however, in its reduction of the bewildering diversity of purpose and form to a coherent,

rationalized movement. Despite the many qualifications necessary, this fundamental fact of physiography gives a meaning to the movement as a whole, making it easier for us to grasp the details of form and the larger features in the progress of inclosure.

The relation of inclosure to population, to the disappearance of the yeoman, and its effect on the cottagers and squatters are questions which Professor Gonner does not meet with entire success. It seems as if he was determined to soften the outlines of the harsh picture drawn by the opponents and critics of inclosure. There is an optimism which the reader will frequently find it difficult to share. The commissioners meted out a rough and ready justice, no doubt; they may have accomplished all that was possible under the conditions; but much that was unfortunate may none the less have happened. The discussion of the yeoman ignores Mr. Johnson's "Disappearance of the Small Landholder" and Dr. Gray's study of "Yeoman Farming in Oxfordshire." The excellent description of procedure by private act is marred by the inadequate treatment of the procedure in Parliament. The inclosure bills had great influence upon the development of procedure on private bills, and there is much in Clifford's "History of Private Bill Legislation" to suggest that such bills were not adequately supervised in passage through Parliament.

Professor Gonner has added much to our understanding of the inclosure movement, but his positive contribution is concealed at times by the revelation of the vast amount of work that still remains to be done before we can hope for a definite constructive treatment of this difficult subject.

ABBOTT PAYSON USHER.

Cornell University.

Haines, Henry S. *Problems in Railway Regulation.* Pp. vii, 582. Price \$1.75. New York: Macmillan Company, 1911.

The author devotes his first six chapters to a brief historical survey of the American railway system from the beginning down to the present. The reviewer feels that this portion of the book should have been either much longer or much shorter. It is too brief to give an adequate or even an accurate sketch of American railway history, and it is too long to allow of a more extended treatment of the problems of present day regulation. To make it still more unsatisfactory, the author by no means confines himself to American railway history. He rewrites English railway history, talks about free silver, democracy, greenbacks and other subjects. Naturally, he makes several mistakes of fact, and at times he can not be held guiltless of "fine writing," for rhetorical effect. When these unkind things have been said, the adverse criticisms of the book have been uttered. The real book begins with chapter six, and from that point on the author deals in clearheaded, unbiased, authoritative fashion with the problems which give title to his book. It is to be regretted that he did not rigidly exclude all extraneous matter, that he might have had more space to deal with the Interborough-Metropolitan Company case, the recent decisions of the Interstate Commerce Commission in the Eastern and Western Freight Rate cases, the results of public interference in the matter of construction, equipment and operation of railroads

and the questions of discrimination. It is to be hoped that Mr. Haines may bring out his several books on railroad matters as a connected series. He would then have space to give us an adequate history of the growth of the American railway net, the problems which confront the railway financiers and the railway freight and passenger managers and the relations of the railways to the public.

The evidences of hasty construction are seen in several places, notably on page 175, where the author gives as one reason why railroads in the United States were built by private individuals, "the disparity between the population and the undeveloped natural resources;" although in subsequent pages he points out that this disparity was the cause of appeals to the states and to the United State for aid. On page 155 he refers to the forthcoming decisions of the Interstate Commerce Commission in the Freight Rate cases in the future tense, while on page 160 and following he discusses these decisions at some length.

To the reviewer it seems that the author does not take sufficient account of the significance of the kind of freight upon the freight rate. He assumes that, because the freight rate per ton-mile has fallen from 1.001 cents in 1888 to 0.763 cents in 1909, the freight rates have declined about one-fourth. What has happened, at least in recent years, is that a larger share of ton-mileage is made up of low-grade traffic. It was brought out in the hearings on the Freight Rate Case for Official Territory, that freight rates had actually increased, although the statistics showed a decline in the charge per ton-mile.

These adverse criticisms are of a minor character. The book is a sound contribution to the discussion of railroad management and railroad regulation by one who understands the problems thoroughly.

ROYAL MEEKER.

Princeton, N. J.

Huey, Edmund B. *Backward and Feeble-Minded Children.* Pp. xii, 221. Price, \$1.25. Baltimore: Warwick & York, 1912.

The latest issue of the Educational Psychology monographs. It is a clinical study of the psychology of defectives with a syllabus for the clinical examination and testing of children; a valuable manual for social workers and students who wish to make studies of retarded, peculiar and feeble-minded children. There is no more suggestive and helpful book about this class of children.

The material is excellent, but the title used is somewhat misleading. All the children described appear from the evidence given to be truly feeble-minded; they are not backward in the sense in which that term is commonly used. Children are backward when behind the average of corresponding age in school grade and in general intelligence because of slow or interrupted growth due to remedial causes. There is, in such cases, no functional disturbance of the nervous system. The thirty-five cases are all high-grade feeble-minded according to the accepted classification of the American Association for the Study of Feeble-Minded. The larger number are border cases to one not thoroughly acquainted with defectives. They represent the kind of unfortunate children found in the public schools and so often confounded by parent and teacher with the backward. Persons responsible for the care of children are, as a rule, without the knowledge

necessary to distinguish between the two confusing classes. It is a serious mistake to regard and treat a backward child as feeble-minded, but usually a calamity to treat a feeble-minded child as simply retarded. Dr. Huey's cases well illustrated the varieties of high-grade defectives. Some one equally able should give us a monograph upon the characteristics of children who appear to be defective, but who need only hygienic, medical and social care to become normal.

New York School of Philanthropy.

ALBERT H. YODER.

Jeffery, R. W. *The New Europe, 1789-1889.* Pp. viii, 401. Price \$2.50. Boston: Houghton, Mifflin Company, 1911.

Under this somewhat ambitious title which leads us to expect a work emphasizing those features of European history in the last century that underlie the new age, Mr. Jeffery gives us a succinct, though not always faithful, re-statement of the military and diplomatic history of the period. The really vital, the dynamic forces of the nineteenth century, those which justify the title "New Europe" escape the author almost entirely. What purpose is there in mentioning names of generals and battles *ad nauseam* while many of the great reforms of the French Revolution, the Industrial Revolution, the transformation of agricultural Germany into industrial Germany, the growth of large cities, socialism, etc., are passed over in silence.

The work is manifestly based upon a re-working of teaching notes. But it would seem worth while even in tutoring, to consider the internal and domestic history of Napoleon's Empire rather than devote all the time to the campaigns. Similarly the organization of the governments of France and Germany after 1870 are at least worthy of mention in view of twelve pages on the Franco-Prussian War. Occasionally, as in the paragraph on the conditions in Italy on the eve of Napoleon's first campaign, the author shows a fine sense for this side of history. But here, too, the advisability of so juiceless a statement as the following on Alfieri is questionable in a book like this:

"Vittorio, Count Alfieri (1749-1803); he published 21 tragedies, 6 comedies, and *Abele*, which was a combination of tragedy and opera; he also wrote an epic in four cantos, 16 satires, many lyrics, and an autobiography" (p. 49).

The tables and charts which the author tells us in the preface are "in no sense anything more than reminders of the subject of the previous chapter," are suggestive, and in teaching might prove very helpful. But even here the general carelessness in preparing the work for the press is apparent. We have "The Pedigree of the Bonapartes" which not only fails to show the later claimants but allows only five brothers and sisters to Napoleon instead of seven. Similarly in the genealogical table of the Hohenzollerns, we have Frederick William instead of Frederick, and nothing to distinguish William I from William II; both are simply William. And not to seek for examples of slovenly work further, in this same table four of the rulers have date of death attached, the rest have no dates. It would be fruitless to draw attention to other evidence of the same sort.

As a history of the military and international affairs of Europe, the book is suggestive, but it is in no sense a work on "The New Europe."

University of Pennsylvania.

W. E. LINGELBACH.

Kawakami, K. K. *American-Japanese Relations.* Pp. 370. Price \$2.00.
New York: F. H. Revell Company, 1912.

This book, by a Japanese journalist, is an interpretation and defense of Japan's foreign policies and is written with the avowed purpose of dispelling the growing misunderstanding of the American people in regard to American-Japanese relations. "An inside view of Japan's policies and purposes," the book is written with an unusually firm grasp of facts and a breadth of view and fairness of treatment that will commend it at once to every unbiased reader who is seeking the truth in regard to the attitude of Japan toward America. The book is, in some respects, an answer to Thomas F. Millard's well-known "America and the Far Eastern Question," which is very severe in its criticisms of Japan, and might well be read by those who have perused Mr. Millard's work.

The book is divided into three parts. The first considers The Manchurian Question, in which American diplomatic and commercial questions are, of course, most fully treated. The soy bean, the author says, is the "key to the Manchurian Question," and is the only important produce of Manchuria, used but little by the Manchurians themselves and practically unknown to Western nations. "Nine-tenths of the Manchurian produce is now purchased by the Japanese. Here lies the secret of success which Japan's export trade has secured in Manchuria. Here also is where the indiscriminate talk about the closing of the 'open door' came in. Let American traders go into the interior of Manchuria and buy beans and bean-cake and bean-oil, just as the Japanese are doing, and they may rest assured that their export trade to Manchuria will increase proportionally, just as Japan's has."

Part II takes up the Korean Question and Part III The Immigration Question. This latter is an excellent résumé of the events on our own Pacific coast that precipitated the immigration difficulties with Japan and of the present status of the Japanese in California. While occasional questions may be raised as to the author's interpretation of Japan's acts, none can be raised as to his sincerity or his open-mindedness. It is this feature combined with his knowledge of the facts that makes the work especially valuable as an exposition of the Japanese side of the questions discussed.

G. B. ROORBACH.

University of Pennsylvania.

King, Clyde L. (Ed.). *The Regulation of Municipal Utilities.* Pp. ix, 404. Price \$1.50. New York: D. Appleton & Co., 1912.

Throughout the life of the National Municipal League papers by high authorities on different aspects of the municipal franchise problem have been read at the annual meetings. The most significant of these essays have been edited by Dr. King and collected in this volume. Together they give a comprehensive and accurate survey of the complicated and urgent problem which every large city in America faces to-day.

Though the editor discusses separately Municipal Ownership versus Adequate Regulation and sums up the debate in a brief and well-balanced Conclusion, the bulk of the book is descriptive and historical, an account, by insiders,

of what has been done by the municipal and state utility commissions in Massachusetts, New York, Los Angeles, Kansas City, St. Louis and elsewhere. Rarely has any public topic been considered by a group of writers so well informed and so sanely progressive as are these essayists. On the whole the volume justifies the persuasion of the Introduction that it "will be of widespread usefulness alike to publicists, officials and instructors."

The conclusion of the whole matter arrived at is, that, under American conditions, virile regulation wins more benefits, at less risks, for the community, than public ownership and operation—the antiquated assumption that competition is either desirable or attainable as a regulator being dismissed with a wave of the pen. But it is recognized that regulation can be effective only if public ownership is possible as an alternative—"a gun behind the door." To forbid a city to manage its own utilities is to make the private corporations arrogant and avaricious.

How difficult and well-nigh impossible it is for an American city to reach the self-confidence and successful enterprise regularly displayed, with respect to public utilities, as this volume shows, by European cities, is illustrated by the experience of New York City on the rapid transit question, since this volume was compiled. Though the character of the Public Service Commission and of the Board of Estimate is above suspicion and the opportunity to complete the construction of a line already begun by the city was patent; yet, scared by the old bugaboo of municipal indebtedness, these bodies have made an agreement with the transit corporations under which the city takes all the financial risks of enormous extensions, under private control and operation, of the transit lines, with the practical certainty of being called upon heavily to subsidize the lines out of taxation. In return for this unprecedented subsidy the city will possibly secure a speedy enlargement of facilities, with the consequent extension of the residential area and improvement of housing conditions, a boon which may prove an offset to the speculative risks undertaken. But experience, as detailed in the book before us, with corporations in the past makes it extremely uncertain whether this speedy enlargement of facilities will actually accrue. If it do not, this, the greatest transaction ever entered into between an American city and private corporations, will be summed up in the slang phrase: "Sold again," a most discouraging conclusion to a decade of education and agitation.

JOHN MARTIN.

Stapleton, S. I.

King, Irving. *The Social Aspects of Education.* Pp. xv, 425. Price \$1.60. New York: Macmillan Company, 1912.

A reference or text-book designed for use in the training of progressive teachers and general source book of social education. The contents are made up largely of annotations books, of papers and reports by a group of educators who believe in a social basis for school training. Dewey, Snedden, Hanus, Bagley, Scott, Addams, O'Shea and others are extensively quoted. There are twenty well-chosen chapter-topics, each followed by excellent bibliographies. The first

twelve chapters are devoted to a discussion of the external social relations of education while the remaining chapters deal with the internal social aspects.

Democratic government of schools is the subject of one chapter and illustrates the plan of the book. It begins with a seven-page extract from a book by the same title written by John T. Ray, the pioneer in pupil self-government experiment, and gives the results of his experiences of over sixteen years. Mr. Ray thinks that most attempts of the kind must fail because the teachers do not understand the real purpose of pupil government. The form and show of a mimic republic are seen rather than the opportunity for training in judgment and control. This selection is followed by six pages from the bulletin of the School Citizens' Committee of New York City in which the ideals of self-government are attractively set forth. The author summarizes and comments upon these two and other views in three pages, and closes with a bibliography of thirty titles.

The appearance of a book of this kind is evidence of the interest school people have in the social aspects of education and their desire to hasten the change in theory and practice of school training which will make school life square with life outside. In order that those most responsible for the spirit and life of the school room may get away from bookishness and learn to regard teaching as a social as well as an intellectual service, Dr. King suggests that educational psychology should include social psychology, and that the teacher shall be trained to render the largest social service possible through the school organization.

Dr. King has provided a valuable guide for the educator who has reached a point in his experience where he knows that the curriculum must be simplified and humanized and is not quite certain that he knows how to accomplish the change. No courses of study for different places and conditions are suggested, but a wise selection of opinion from the leaders in educational thought of the present together with the author's own convictions are placed at perplexed ones' service. The book is also an excellent text for use in teachers' training courses.

ALBERT H. YODER.

New York School of Philanthropy.

Klemm, L. R. *Public Education in Germany and the United States.* Pp. 350. Price \$1.50. Boston: Richard G. Badger, 1911.

One is glad to welcome another book from the pen of Dr. Klemm, late specialist in foreign education in the United States Bureau of Education, especially for the light it throws on the organization of subject matter and methods of instruction in vogue in the elementary schools of Germany. Although the author has been for forty-five years in America, he has still retained his interest in the schools of his Fatherland, and still looks at many questions from a peculiarly Teutonic point of view. The opening chapter on Why Cannot the American School Accomplish what the German School Does? published in the *Educational Review* a few years back, presents on the whole an admirable analytical answer to the question propounded in its title. Although the author points out forcibly many of the short-comings of our schools which, alas, are all too true, he loses sight of one very significant factor that must necessarily make for the greater diffuseness

of American education in comparison with the German—the divergent political and social ideals of the two peoples. Germany is educating its individual children for very specific life work in a monarchical and decidedly stratified form of life, while America's problem is to give the child that education that will stand him in good stead in the freer, more flexible life of a democratic society.

The suggestion in the preface that "some of the chapters may cause discussion, even protest, among teachers," is likely to be met to the author's satisfaction when one finds expressions like the following: "At first the Anglo-American was not conscious of his mission, and for two centuries the colonists neglected their schools" (p. 13); "the very meat of the educational dinner is English. That is the language which will develop logical thought, brush out the cobwebs of superstition of almost every kind" (p. 81); "if it had not been for the Americans of German descent, this country would have been cursed with paper, or depreciated silver, currency" (p. 86); "America has not become great in consequence of its schools, but in spite of its schools. The great extent of civilization . . . the immense progress industry has made in this country are to a large extent owing to millions of immigrants" (p. 132); and "I have found only two native Americans who could speak and write German fluently and correctly . . . There may be more who know French perfectly, but there are fewer who can converse in Latin, Italian, or Greek" (p. 243). Dr. Klemm handles the woman teacher with no gloved hand, and apparently finds the German about as unsatisfactory as her American sister. The chapter on English, a Dead Language, represents an extreme German point of view that is hardly likely to meet with approval from Anglo-Saxon readers. English is admittedly an eclectic language, and that very fact constitutes one of its strong points. It is not so hampered by ideas of linguistic purity that it is compelled to endure the ponderousness of a long compound like the German *Menschenfreundlichkeit* when it may appropriate a simpler and equally significant word from the Latin—humanity. The large part of the argument throughout the chapter is based upon the primacy of linguistic purity over every other consideration.

Probably the most valuable chapter of all is the one on Schools for Backward Children, wherein the author describes all too briefly the so-called "Mannheim System" founded by Dr. Sickinger, the head of the school system in Mannheim. It is unfortunate, however, that the diagram here represented was not more fully expounded for it is hardly sufficiently self-explanatory as it stands. One might also take exception to the statement that the school decoration found in the town of Lauscha is typical of that in German schools. The writer can only add that in several months' experience in schools of various types in the principal cities of Germany, he has never found anything like it, nor are the attempts at school decoration there at all comparable with what one may find in schools in America from Massachusetts in the East to California and even Texas in the West.

The book contains nearly a score of lessons on the various subjects of the elementary school curriculum that are sure to prove of some value to many teachers, and one may only hope that Dr. Klemm is quite mistaken when he says "this book will preach my last sermon."

FREDERIC ERNEST FARRINGTON.

Teachers' College, Columbia University.

Laughlin, J. Laurence. *Banking Reform.* Pp. xii, 428. Price \$2.50. Chicago: The National Citizens' League, 1912.

This volume is an unusually valuable contribution to the literature of finance. In view of the undoubted weakness of our banking system and the present agitation for its reform, too much emphasis on the subject is well-nigh impossible. It was to be expected that the editor would devote to it his usual scholarly care and accuracy and the reader is not disappointed. The disastrous effects of our present reserve requirements, the lack of cooperation among banking institutions, the inelasticity of our bank notes and of our credit system, our lack of a discount market, the danger of the use of our reserves for call loans on stock market collateral—all these and other defects are carefully and thoroughly explained. In its criticism of existing conditions little is left to be desired.

As a remedy for our difficulties the plan for a National Reserve Association, as proposed by the National Monetary Commission, is advocated. Here again the book is strong. However, the reader must regret that several topics have not been treated. One of the most serious features of present banking practice is the concentration of surplus funds in New York where they are loaned on stock market collateral. As the National Reserve Association will not pay interest on deposits, and as the privilege of rediscount is open to all banks "having a deposit with it" (see sections 26, 27 and 28 of the bill) there seems to be no reason why the banks should not keep merely a nominal deposit with the association and send their other surplus to New York as at present. Another weakness in the proposed plan is also ignored in the book except for a footnote (p. 378), which is largely a quotation. If the association is not to purchase and sell in the open market its control over the discount rate can not be effective. In times of easy money it could lend only to the banks—its depositors—on their own terms. It could act only when a stringency was under such headway that the banks were compelled to borrow from it. This is in marked contrast to the practice of the large central banks of Europe which can make their rates effective from day to day.

Two unfortunate errors have crept in. The required reserves under the National Bank Act are given on page 7 as percentages of "outstanding liabilities" instead of deposits—a statement which is repeated on pages 29 and 284. In a description of the Aldrich-Vreeland Act of 1908 (p. 70) the tax on emergency notes is said to rise "from five per cent during the first month of their life to ten per cent at the end of six months." The explanation that these are per annum and not monthly rates would have been better.

E. M. PATTERSON.

University of Pennsylvania.

Learned, Henry B. *The President's Cabinet.* Pp. xii, 471. Price \$2.50. New Haven: Yale University Press, 1912.

Mr. Learned's book is one in a field covered by no other work. The extra-constitutional, and until 1907 extra-legal group we familiarly call the cabinet, has not attracted the attention of students of history and politics to the extent its importance justifies. We have not wakened to the fact that the heads of the executive departments have become one of our greatest institutions of govern-

ment. Acting in ways which as a rule arouse little public attention they are often the controlling factor which makes the observance of laws a fact or a fiction and an administration a success or a failure.

No one before Mr. Learned has given an adequate study to the process by which this body, only indirectly hinted at in the constitution, has grown to its present importance in our national affairs. The first chapters contain a contrast between the English cabinet, a controlling factor in legislation, and the American body which gradually was given the same name though it was only advisory to the executive. Then follows the discussion of the development of the idea of the President's council culminating in the organization of the state, war and treasury departments. A separate chapter is devoted to each of the cabinet positions which have later developed. Some, like the attorney-generalship, are shown as the outgrowth of positions originally provided for, but the functions of which have increased in importance. Others have become necessary because of the economic problems with which the administration has had to deal.

In review of the offices as a group the author shows that there never has been a definite ideal of what the cabinet should accomplish—a circumstance which has made its extra-legal growth easy, though it explains also the survival of legislation which has become unused. The reliance of the President upon the cabinet for guidance in administration has increased and must continue to do so. Only occasionally have the chief executives adopted important policies without consulting the cabinet or against its advice. The administrations of Adams and Jackson furnish the most marked examples. As a rule the strongest Presidents have been wise enough to lean heavily upon the advice of the members of their cabinets. Many of our most signal achievements are the results of policies which both in the inception and execution must be credited not to the head of the administration but to his counsellors.

Many who read Mr. Learned's book will look for a description of the actual functioning of our great administrative offices. Students of government have long awaited a volume which will give a picture of the actual work done by the executive departments. Just as the constitution is only the frame of government so the text of the law grants a bare list of powers. What is actually accomplished by action within the terms of the statute may be only faintly indicated by its terms. Our books on administration give us too much of the anatomy of our institutions, instead of their actual working. It is important for us to know how the offices came to be, but it is no less important to know what they now do, and how they affect our daily lives. This latter and more difficult task Mr. Learned has not attempted. The field is still open for a book which will show not what the cabinet has been but what it is and what it does.

CHESTER LLOYD JONES.

University of Wisconsin.

Lloyd, Caro. *Henry Demarest Lloyd.* Pp. xxvii, 698. Price \$5.00. New York: G. P. Putnam's Sons, 1912.

The significance of Mr. H. D. Lloyd's career is hardly exaggerated by the sister who writes these two large volumes in his memory. He accomplished certain

memorable results and he typified in himself a class of workers who are probably the most influential leaders of our present political discussion on economic matters. But if he did a useful work in calling attention to various evils, especially to the evil of unequal railway charges, it must be added that he typified the faults and excesses of the present agitation; for that also he is significant. In discussing the "rebate" he ascribes the whole evil to personal favoritism, a cause frequently effective, no doubt, saying this must have been the motive, because these advantages were otherwise "inexplicable on any known hypothesis." In this he ignores the whole economic background of that practice—an excess of railway construction and of competition which must have produced inequality if there had been no personal favors. The picture is thus essentially false—the rebate receivers were not a few men; they were for a long time almost the whole commercial body, willing or unwilling, driven to desperate and dubious conflict. Likewise, Mr. Lloyd's account of the South Improvement Company omits the whole main purpose of that matter; he overlooks the railroad pool, and the function of the oil refiners as eveners, by which the railroads hoped (with some excuse) to save themselves from that ruinous competition. The reader is left again to suppose that there was no possible motive on the part of the railway men except the desire to build up certain refiners of oil. Half of the facts necessary to understand the whole business are omitted. The horse, in a well-known legend galloping away on its fore legs after the city gate had fallen and cut it in two just behind the saddle, is an interesting spectacle, but not serviceable for a zoologist generalizing about horses. It should be remembered that this matter of rebates, as to which he omitted the chief explanatory facts, is the principal part of his principal work.

The second purpose of this biography, the delineation of an inspiring personality, must commend itself even to one who dissents ever so widely from Mr. Lloyd's method as an economist. Few writers have equaled the grace and vigor of utterance which he exhibited even in early manhood; few enthusiasts of our time have exerted for good or evil, so great an influence, few men have given, even to those of unlike thought, so strong an impression of sincerity, of charm in speech and manner. An acquaintance of a few hours persists in one of my most vivid and delightful recollections after almost a score of years.

A. P. WINSTON.

Pearre, Md.

Lowenthal, Esther. *The Ricardian Socialists.* Pp. 105. New York: Longmans, Green & Co., 1911.

This monograph, one of the most recent of the series published by the faculty of Columbia University, deals with a group of thinkers, four in number, who represent a stage of thought in transition between the Utopian socialists with their basic doctrine of the equality or perfectability of man and the Marxians with their basis in economic principles. The four writers who typify this development, Thompson, Gray, Hodgskin and Bray, wrote in the period from 1820 to 1840, and Miss Lowenthal has undertaken to show the relation between their writings and the character of the period, a period, as is well known, of stagnation

in industry, of unemployment of laborers and of misery; a period which witnessed persistent discussion of such topics as factory and prison conditions, reform of the corn laws, poor laws, combination laws against labor unions, and parliamentary reform.

These radical thinkers were impressed with the belief that there was something fundamentally wrong in the actual organization of society. Accepting the Utopist philosophy, they maintained their adherence to peaceful means of attaining reform and depended on an educational campaign to bring about the needed change. They supported their advocacy of a new social order by an economic doctrine that grew out of their environment—the labor theory of value, using this “as the basis of the claim of labor to the whole produce of industry.” In their support of the doctrine that political power cannot exist without economic power, they preceded Marx in an economic interpretation of history which he later built into a system.

Miss Lowenthal's analysis of these writers is an admirable exhibition of scholarship. Clear, concise, excellently organized, it pictures a stage in the development of economic theory which has heretofore been unavailable to the many and puts it in a form readily usable. It would be well if we might have more like it.

BRUCE D. MUDGETT.

University of Pennsylvania.

McKeever, William A. *Farm Boys and Girls.* Pp. xviii, 326. Price \$1.50. New York: Macmillan Company, 1912.

This is a book for all farmers and their wives, country ministers, rural school teachers and rural social workers. It is very much needed. In the hands of earnest social workers it will give topics of interest for talks before grange, church and Sunday-school. There is no attempt to “ram religion down our throats,” but a simple direct placing of life upon the highest plane. That “the country has continued for many years past to become richer in farm products and equipment, but it has steadily grown poorer in social and spiritual values,” no one can gainsay. It has been too well forgotten that there is such a thing as a rich, prosperous successful man who is without spiritual development. A man still may gain the whole world and lose his own soul; and although we of the farms rarely gain even a meager corner of the world, yet the never-ceasing grasping after material prosperity tends to make any class who puts its best strength into this sort of effort negligent of the more uplifting things of life.

In the chapter on the Country Mother the tendency that the exhausting duties of farm life has to actually cause the death of farm women is spoken of, and it is indeed an alarming truth that more farmers lose their wives in early married life than any other class of men.

Besides the valuable subject matter of this book, a bibliography is given at the end of each chapter which is the best of its kind. Such lists of books have long been sought by students of rural social conditions. It would be of great value to such students if the private lists owned by widely separated students could be collected by the American Academy of Political and Social Science.

(MRS.) E. E. SMITH,

Pennsdale, Pa.

Marcks, Erich. *Männer und Zeiten Aufsätze und Reden zur neueren Geschichte von Erich Marcks.* (2 vols.) Pp. ix, 654. Price 10 marks. Leipzig: Quelle und Meyer, 1911.

A collection of twenty-eight essays and addresses by an historian who is also a stylist. The announcement of a work by Erich Marcks is always greeted with interest—and in these studies no reader of modern European history will be disappointed.

Professor Marcks works with the genius of the miniature painter and impressionist combined. Whether the essay deals with a biographical subject—Philipp II of Spain, Coligny, the younger Pitt, Dahlmann, von Sybel, von Treitschke, Mommsen, Bismarck, von Roon; or with the presentation of a chapter of modern history—as, Coligny and the Murder of François de Guise, Louis XIV and Strassburg, 1848, The University of Heidelberg in the nineteenth century, German and English Relations since 1500; or with the description of places and conditions—as In the England of Elizabeth, La Rochelle, The New Germany and its National Historians, Hamburg and the Intellectual Life of the Bourgeoisie in Germany, the lines are sharply drawn, the picture is clear and vivid. A keen sense for the essential and disregard of the non-essential we hardly expect in a German historian, but here we have them both.

In the dedication to Alfred Lichtwark the author states his purpose: to present a selection from essays and addresses that have appeared on various occasions during the past twenty-five years. They are not arranged in strictly systematic order. The first 120 pages are the product of studies in French and Spanish history of the sixteenth century, particularly the Huguenot movement. Then follows a finely written delineation of the character and career of the younger Pitt. The remainder of the work, with the exception of the two essays on the relations between Germany and England since 1500, deals with recent German history, the field in which Marcks has made himself so well known by his "Bismarcks Jugend" and "Wilhelm I." The volumes are addressed primarily to the educated public of Germany, but their appeal to American students can be none the less strong. Those who have known the charm of Freytag's "Bilder aus der deutschen Vergangenheit" will find here a continuation worthy in form, but based on scholarship far more thorough.

Professor Marcks is essentially a biographer. The sketches of King Philipp II of Spain, Coligny, Pitt, Mommsen, Bismarck, and Roon—no one of which exceeds forty pages—are master-pieces. An extraordinary amount of detail is woven into the pictures but without in any degree blurring the images. We have here the literary artist working with the best materials of sound scholarship.

Volume II begins with a finely considered study, Goethe and Bismarck, an address read last June before the Goethe Gesellschaft at Weimar. The two great Germans of the century, the idealist par excellence and the realist par excellence, are here placed side by side, each as the chief exponent of his age, and the fundamental affinity of the two, in spite of many differences, is clear. Particularly interesting is the account in the following paper of the author's one interview with Bismarck at Friedrichsruh in 1893. The one hundredth anniversary of Roon's birth was quietly celebrated in 1903, and on this occasion Marcks wrote for the *Deutsche Rundschau* the careful study of Roon's life and work that is

here reprinted. Here, as elsewhere, the author gives by skilful selection of detail the clearest picture of the real Roon and his part in the work of changing Prussia from an absolute to a constitutional monarchy. The extremely reactionary sympathies of Roon have certainly deprived him of his due share of credit, but without his effective work it is very doubtful if Bismarck could have secured so complete a triumph for the crown over the legislature during the sixties, as he did.

But Marcks is not only a skilful portrayer of men. The chapters on Germany and England, on *The Imperialistic Idea at the Present Time* (1903), and on 1848 exhibit not only ample research but the power to present whole chapters out of modern history with a clearness rarely attained by others. The strong bias in favor of imperialism, *Machtpolitik*, hero-worship, which is obvious on nearly every page, has certainly influenced the author in the choice and treatment of his subjects, but that he works strictly from the facts and that his numerous generalizations are reasonable are equally obvious.

The book is well printed on good paper. The large number of three-, four- and even five-page paragraphs, however, shows a certain lack of consideration for the reader that might well have been avoided.

ROSCOE J. HAM.

Bowdoin College.

Miraglia, Luigi. *Comparative Legal Philosophy.* Pp. xl, 793. Price \$4.75.
Boston: The Boston Book Company, 1912.

This is one of the series prepared by a committee appointed by the Association of American Law Schools, a committee composed of Ernest Freund, Charles H. Huberich, Albert Kocourek, Ernest G. Lorenzen, Roscoe Pound and John H. Wigmore. Professor Miraglia's treatise is most extensive in the fields covered. He includes epistemology, political theories, ethics, sociological and anthropological discussions of the origin of legal institutions and their place and value, and interspersed excursions into psychology and biology. The philosophy of law, he says "should sketch with a free hand the organism of legal institutions according to the principles of reason, and should have regard to the multiplications and intimate relations of philosophy with the legal, social, and political sciences." The author's discussion of the philosophy of law is fully in accord with his definition. There is an introduction of eighty-two pages giving a sketch of the history of philosophy from Greek to modern, confined for the most part to the development of epistemological theory with an occasional interjection of the theory of the state or of law. The application of this epistemological theory to law and legal theory is left entirely to the reader and it is often very difficult to see wherein any application can be made. Except for occasional paragraphs the introduction might as well preface a philosophy of science or a philosophy of religion.

Following the introduction is Book I which discusses the various ideas of law, such as the inductive and deductive, and also the relation between law and morals, social science, sociology and political science. Book II is devoted to a discussion of private law. The treatment is historical with an account of the work of sociologists like Vico, Spencer, Maine, Morgan and McLennan. These

later chapters have real value and alone justify the use of the book as a text for undergraduates, which is its professed aim. The author is a little apt to accept uncritically theories, like that of original community of women, which have been rejected by many modern writers. However, his analyses of the individual and his rights, of property and the methods of acquiring it, of legislation as to property, of legislation as to contracts, the freedom of contract, of patents, etc., are cogent and of value.

All must frankly recognize that the author's task is an exceedingly difficult one, one that can be adequately handled neither by the philosopher nor by the lawyer. With such a task, the author has done his work admirably. If read critically the book is of great suggestive value.

CLYDE L. KING.

University of Pennsylvania.

Moore, John B. *Four Phases of American Development.* Pp. 218. Price \$1.50. Baltimore: Johns Hopkins Press, 1912.

Published lectures of a more or less popular character bespeak an exercise of charitable forbearance on the part of the reviewer. The critic may not treat too seriously a series of four lectures which were designed to sketch only the salient features of American history and to be suggestive rather than scholarly and informing. Just why Professor Moore labeled his four selected phases of American development as he did, is not clear. Federalism, democracy, imperialism, expansion, are not mutually exclusive terms. Yet their use in these lectures indicates that the writer conceives one phase to have succeeded another—the federal phase yielding to the democratic, and it in turn to the imperialistic. There was certainly a democratic movement before 1789, as Professor Moore suggests; and the term federal is quite as applicable to the quarter-century following the adoption of the constitution as to the preceding period. What is termed imperialism, did not succeed the democratic movement of the middle of the nineteenth century, but accompanied it. Moreover, nowhere, except in alluding to the recall, has the author taken account of the later democratic phase, in which we are now living, typified by the agitation for direct primaries, direct legislation and popular review of judicial decisions. Inappropriate, too, by Professor Moore's own admission is the term "expansion" to the fourth phase of American development, for he takes sharp issue with "our begoggled seers" who think that the United States became a World Power in 1898. In acquiring the Philippine Islands "we were merely following a habit which had characterized our entire national existence" (p. 148). Here and there are statements which sound somewhat dogmatic. It does not quite accord with the ideal of the historian, as set forth in the preface, to speak of the "irrepressible conflict" as "a contest, upon the fair settlement of which any three intelligent and disinterested men . . . should have been able to agree in half an hour" (p. 107). The reviewer is not disposed to criticise the seeming irrelevancy of certain parts of the lectures, such as the digression touching upon the mooted question whether the United States has a common law, for these passages are among the most suggestive in the volume.

ALLEN JOHNSON.

Yale University.

Morris, Robert C. *International Arbitration and Procedure.* Pp. x, 238. Price \$1.35. New Haven: Yale University Press, 1911.

No attempt is made in this little series of essays to give an exhaustive treatment of any of the phases of international arbitration and procedure. The object is to place before the reader, in an afternoon's reading, a sketch of what has been accomplished in the development of arbitration as a means of avoiding international conflict.

In the first chapter the examples of arbitration previous to the nineteenth century are reviewed, especially the large number of settlements arrived at through the reference of disputes to monarchs. The cases in which the kings of England and of France have acted are shown to have been numerous and important. The next two chapters show the questions involved in the chief arbitrations of the nineteenth century. The United States has contributed more than any other nation to the development of arbitral law and procedure, both because of the number and the importance of the cases which it has settled by this means. Boundary disputes, claims involving damage to "national interests," pecuniary claims, disputes as to maritime rights and a long line of other subjects have been passed upon by arbitration agreements to which the United States has been a party.

The review of experience clears the way for the discussion of the principles involved in arbitration. It is clearly shown that the usual reservations in arbitration treaties in favor of "national honor," "independence" and "vital interests" rest on no historical basis. There are many instances of arbitrations which have dealt with subjects clearly within these fields. The phrases themselves the author believes admit of no definition of their content. Every dispute which arises involves more or less directly the exceptions heretofore forming a part of the arbitration agreements. The author believes that no great advance will be made until we frankly face this fact and adopt the broad principle of unlimited arbitration. The volume is closed by a review of the cases which have been brought before the Hague Court showing the degree to which we have approached a true tribunal having jurisdiction over states.

No better brief summary of progress of the arbitration movement and of the difficulties it must meet has been published.

CHESTER LLOYD JONES.

University of Wisconsin.

Moule, Arthur E. *Half a Century in China.* Pp. xii, 343. Price \$2.00. New York: Hodder & Stoughton, 1912.

One who reads this book doubts what Tennyson says about the Cycle of Cathay, for in richness of experience few lives equal that of the author. Fifty years of missionary work in China when the country was passing through its awakening bring experiences quite as thrilling as those of any western world dweller. The venerable Arthur Evans Moule made himself not only a resident of China, but one of her able interpreters.

China is in the throes of the Taiping rebellion when the story begins, and the first eighty pages cover the trials of the disturbed period 1861-4. Popular riots

and the relations which the missionaries established with both imperial and revolutionary authorities are described with the vividness possible only to an eye witness.

The central chapters deal with the quiet and peace of the ordinary course of Chinese life. Incidents of daily life, summer journeys, the work of spreading the gospel and teaching the natives the lessons which western science has made common property for the rest of the world are recounted. Chinese wedding customs, travel, court procedure, legends and literature are sympathetically described.

An especially illuminating chapter is the one on Shanghai showing both the old and new town and describing the geographical, political and commercial influences which have transformed the obscure, unimportant port difficult of access into the bustling, commercial emporium of the present.

There follows a valuable commentary on the methods of missionaries. Both counsel as to what to avoid and the broad field of extra religious work in which the missionary must busy himself are given. The book closes with a retrospect and prospect. China unchanging, the author believes is not destined to be revolutionized in a day. The outward form of the government and civilization may be changed, but the spirit of the civilization which has proved satisfying to so many thousands of millions will be modified but slowly and on most points it needs no modification. In spite of new parliaments, republican institutions and programs the best of the old must continue. Indeed the author evidently has misgivings that the Chinese themselves may for a time accept the new too quickly, but believes that in the long run they will not stray far from the teachings which have made Chinese civilization so stable in the past. The influences which will transform China, and remove the objectionable features of her national life are those which work quietly through the new education and raising the position of women. In political change he has but scant confidence. "China will be best advised if she amends her constitution not by slavish copying of western models but by self-improvement and self-reform conserving as far as possible all that is just and beneficent in her own ancient system."

CHESTER LLOYD JONES.

University of Wisconsin.

Munro, William B. *The Initiative, Referendum and Recall.* Pp. viii, 365. Price \$1.50. New York: D. Appleton & Co., 1912.

This volume contains an introductory chapter by the editor, and some fourteen other chapters discussing critically and interestingly various aspects of the initiative, referendum and recall. The chapters are not limited to papers read before the National Municipal League. There seems to be an impression abroad that all of the volumes in this series are to be limited to papers published in that League's Proceedings. Such, however, has not been the case in any one of the volumes thus issued, nor is it to be the exclusive rule for any of the forthcoming volumes.

Professor Munro in his introductory chapter states the salient arguments for and against these new agencies of democracy. Other of the chapters, however,

present, in virile fashion, the arguments pro and con. These arguments are presented by those ardently supporting or opposing the measures, as the case may be, the volume being fairly well divided as to the space given to the opponents and proponents of these measures. The book is interesting and should be of great value at the present time.

It is always easy to point out omissions in such a volume as this, but most to be regretted is the omission of all discussion as to the statutory provisions for the initiative, referendum and recall. However, they are amply defined and illustrated and hence for general interest this omission may not be so serious. Those who wish to make a technical and detailed comparative study of such provisions can readily obtain them in such volumes as "Documents on the Initiative, Referendum and Recall" by Beard and Schultz.

This is the second number of the National Municipal League Series, edited by Clinton Rogers Woodruff, the first being on "City Government by Commission," and the third on "The Regulation of Municipal Utilities." The League plans other volumes which will give an open forum for the discussion of other current municipal problems. The League is unquestionably performing most valuable service in getting such a series before the public.

CLYDE L. KING.

University of Pennsylvania.

Notestein, W. *A History of Witchcraft in England from 1558 to 1718.* Pp. xiv, 442. Price \$1.50. Washington: American Historical Association, 1911.

In this monograph Professor Notestein enters upon a field where few serious historical students have preceded him. He does not attempt to treat all phases of the subject in this pioneer work, but confines his attention to "a narrative history of the more significant trials along with some account of the progress of opinion" (p. v). Following a method of analysis of contemporary accounts of trials and of writings on the theory of witchcraft, he notes the fluctuations of popular belief in the superstition and of the administration of the law against witches in the 160 years which marked the height of the movement as well as its final decline in England. In the course of the narrative light is thrown on such topics as the spread of outbreaks against witches, the character and personality of those accused of the offense, the causes of such accusations, the nature of the evidence admitted and the use of torture in trials, and the changes in the conception of what constituted witchcraft.

The work is based on wide and painstaking research in a variety of sources. Among the most important of these are the contemporary pamphlet accounts of trials. Published to meet the demands of what to-day would be the newspaper-reading public, they dwell at length on the harrowing details, usually with little attempt at accuracy or impartiality. To the use of this difficult material the author seems to have applied discretion and sound judgment. He is careful to indicate what conclusions are to be considered tentative, and to distinguish between inference and fact. The general result is a scholarly and interesting account of a typical phase of the life of the period.

W. E. LUNT,

Bowdoin College.

Paullin, Charles O. *Diplomatic Negotiations of American Naval Officers, 1778-1883.* Pp. 380. Price \$2.00. Baltimore: Johns Hopkins Press, 1912.

This book comprises the Albert Shaw Lectures on Diplomatic History for 1911 at Johns Hopkins University. In it the author recounts the peaceful achievements of the American navy in the field of diplomacy. It is more than a collection of detached diplomatic activities of American naval officers, as its title might imply. It is a well-defined, unified work that deals with the American sailor-diplomat and his contribution to American diplomacy.

There are points of similarity that characterize the negotiations of the American naval officer, which the author clearly indicates as his lectures progress, such as (a) the character of the country with which he negotiated; (b) the subject matter of the treaties which he sought to negotiate; (c) the methods used in negotiating.

The countries were, in the main, backward, undeveloped, non-Christian and beyond the pale of civilization. They either adopted a policy of seclusion and isolation, such as China, Japan, Korea, etc., or a policy of ransom and tribute, such as the Barbary States. With the first group the problem was one of friendship and commerce, and the treaties sought to be negotiated contained shipwreck conventions, the most-favored-nation clause, and provisions for the opening of ports; with the second group the problem was one of chastisement, and the treaties, while nominally of amity and commerce, were really intended to abolish the heinous practice of piracy and tribute.

The American naval officer is the "shirt-sleeve" diplomat par excellence. He is blunt in his negotiations, speaks in the language of the cannon, negotiates his treaties as result of ultimata and takes care to have them signed within range of his ship's guns. "Punch" summed up our sailor-diplomat's task when it declared that Commodore Perry must open the Japanese ports even if he had to open his own.

The contributions of the American naval officer to American diplomacy are noteworthy, as the lectures admirably narrate. He usually negotiated the first treaty with the country to which he was accredited, and in notable instances not only for his own country but for the civilized world as well. Particularly noteworthy are the achievements of Commodore Robert W. Shufeldt in Korea and Commodore Matthew C. Perry in Japan. Both missions illustrate the peaceful successes of American naval diplomacy, for each accomplished tasks that had baffled the leading European powers, and each attained his object without the firing of a shot or the engendering of ill-feeling of the nation in question.

There is, however, a slight break in the unity of the author's theme. Chapter one is devoted to the so-called diplomatic feats of John Paul Jones. It recites his efforts to obtain a loan of men-of-war from France and to settle prize claims (on a five per cent commission basis) with France and with Denmark. Jones' diplomatic achievements in France dwindle into insignificance when it is recalled that so able a diplomat as Dr. Franklin, then minister to France, was on the scene and made easy the sailor's negotiations. Moreover, Jones' duties and negotiations were so unlike those of other American naval officers described in the lectures, who dealt with non-Christian countries, with their problems of opening of ports, establishment of trade and of consulates and the abolishment of piracy

and of the practice of levying tribute that the break in the unity of the author's theme becomes all the more perceptible.

As a study in diplomacy from a new viewpoint—that of the navy—the book is a valuable contribution to American diplomacy. It is authoritative and contains valuable footnotes with references to original sources and correspondence, that indicate the wide range of the author's research and authority.

CHARLES E. ASNIS.

University of Pennsylvania.

Porter, Robert P. *The Full Recognition of Japan.* Pp. x, 789. Price \$4.00. New York: Oxford University Press, 1911.

Changes in Japan are so great and her growth so rapid that even recent books dealing with the economic and social conditions of that empire are out of date. Hence this latest and comprehensive work, which is "a detailed account of the economic progress of the Japanese Empire to 1911," is most welcome by students of the Far East. It supplies a great need. It has brought together, in one large volume and in most available form, the essential facts of the intensely interesting story of Japan's phenomenal progress in recent years, not simply in economic growth, as the sub-title indicates, but also, in some degree, in its social, political, educational, military and literary advancement.

The book, however, is far more than a handbook on Japan, although by virtue of the great variety of topics treated and the marshaling of the latest facts and figures in connection with those topics, it may well serve that purpose. It is an explanation and interpretation of the progress of Japan given by a careful and sympathetic observer and student. The reader may feel that at times the author's optimistic views in regard to Japan's economic and political future are a result of a very apparent warm sympathy for and admiration of the Japanese, and may not be altogether warranted by the facts, as measured by her resources. It is true that very little is said of Japan's disadvantages or of existing evils and deficiencies. But it must be remembered that this book is a record of progress, not of failures; of things done, not of reforms that must be effected. And thus, measured by her accomplishments in the brief space of forty years, Japan's progress is nothing short of phenomenal in all departments of life, be it political, industrial or social. The reading of this book cannot but strengthen and prove this assertion. That there are physical limitations to this development, however, must be recognized. But the author is even more sanguine in his belief in the industrial future of Japan than many of the Japanese themselves.

The forty-nine chapters into which the book is divided may be grouped under four heads. The first six chapters are historical, tracing the national and economic development of Japan from early times through the period of the Shogunate and the period of reconstruction to the "full recognition of Japan" in recent years as a Power of the first class. In these chapters it is interesting to note the author's recognition of the influence of geographical features upon the Japanese character and development. The next group of chapters (vii to xxvii) may be regarded as dealing principally with the commercial geography of Japan. Here are chapters on the physical characteristics of the islands; the population; soil, forests and mineral resources; industrial progress; trade; cities, etc. Chapters on the

army and navy, education, municipal progress, and finance are also to be found in this group. The third group (chapters xxviii to xxxvii) deals with social and art conditions. Here are discussed Japanese painting, sculpture, literature, journalism, drama and music, as well as such subjects as Japanese philanthropy, prison reform, etc. The fourth group of chapters is devoted to the colonial possessions, their resources, administration and value to Japan.

In style, the book is clear and most readable; its typographical form pleasing. Marginal paragraph headings add to its value as a book of reference. The several colored maps possess the very great advantage of clearness, due to the exclusion of detail and the insertion of only the important and essential.

G. B. ROORBACH.

University of Pennsylvania.

Reinsch, Paul S. *Public International Unions.* Pp. viii, 189. Price \$1.65. Boston: Ginn & Co., 1911.

In this interesting book, Professor Reinsch has, if the reviewer is not mistaken, given us the first systematic treatment of international unions which has appeared in the English language. At the same time that the codification and comprehension of the rules of international law based on the equality of states is progressing rapidly, the governments of the world have formed associations for the supervision and discussion of certain interests, too broad in their scope to be independently controlled by any one state. Take the Universal Postal Union for example. The simplicity and effectiveness of the world-wide postal communications depends upon the acceptance by all the nations of the world of a uniform rate of postage and a proportional share of the expense and profits. Such a universal agreement could not, of course, be reached by means of separate agreements between the different countries of the world. A conference of delegates from the different nations was necessary. With the ever-increasing development of international relations, it has been found necessary to create other unions to look after economic, sanitary, and scientific interests.

When any matter assumes sufficient importance to justify international regulation an international conference of delegates of all the interested powers is called and a convention embodying certain unanimously accepted principles is adopted. This convention ordinarily provides for the calling of periodic congresses to modify the convention, and, also, establishes a central office or bureau as it is called. This central bureau receives all information regarding the particular matter committed to its charge and publishes reports, giving information and making suggestions for the further improvement of the service. It is very noteworthy that the periodic congresses called to legislate for the furtherance of the purpose of the union is not a body where the representative or delegate from one state may block by his vote the adoption of any proposal, but a majority vote of the delegates present is sufficient to put through a measure. International unions have, furthermore, broken away from the unworkable theory of the equality of states. Great empires, such as Great Britain, sent delegates to each administratively independent territory like Canada and Australia. With such a system it is possible for an international union to transact its affairs in much the same way that a large corporation would look after its interests.

As the number of these international unions increases and as the importance of international regulation gains upon local regulation within the state, much in the same way as the Interstate Commerce Commission has increased in importance at the expense of state commissions, international control of international activities will have become a fact.

This growth of international unions brings with it a growth of international law applying to their control and action, but this international law is growing up in a quite unobtrusive way as a result of the necessity of finding a system to meet the needs of the case. Scientific experts with broad outlook meet together to formulate regulations to facilitate the development of the particular matter in which they are interested. This leads them to make mutual concessions to the representatives of the different states for the purpose of attaining the common object dear to all. And so a reasonable system of procedure is being evolved. At the capitals of the world and in strictly diplomatic concerns the smallest states proudly claim equal rank and position with the greatest, and the application of the rule requiring unanimous consent for all decisions prevents the effective handling of international affairs. International unions are quietly building up the real international law which will govern in the place of the unworkable system of international equality.

Professor Reinsch, also, discusses the effect of the growth of these international unions in preventing war. The treatment is scientific, yet not technical, so as to interest not alone the student of international law and government. Scientists, economists and those in quest of general information will read it with profit.

ELLERY C. STOWELL.

University of Pennsylvania.

Roe, Gilbert E. *Our Judicial Oligarchy.* Pp. xiv, 239. Price \$1.00. New York: B. W. Huebsch, 1912.

Storey, M. *The Reform of Legal Procedure.* Pp. 263. Price \$1.35. New Haven: Yale University Press, 1912.

Both of these books deal with a subject of great present public interest—our judicial organization. In temper they stand in strong contrast. Mr. Roe believes the courts have forsaken their proper field of activity to usurp the functions of the legislature and that their powers should be curtailed; Mr. Storey, that conditions economic and political have so changed the circumstances of trials that we need many adjustments in our judicial system, but no overturning of our long-established institutions. The power of the courts should be increased rather than diminished. The one shows us the abuses which have developed in our courts, the other some constructive policies which may be followed for their correction.

Mr. Roe opens his book with a discussion of the very patent distrust with which the courts are now regarded by a large portion of our people. He then argues that "the courts have usurped the power to declare laws unconstitutional"—a thesis which recent studies seem to have disproved at least as to the federal judiciary. Next he defends stronger ground—that if courts pass on validity of

laws it is inevitable that the economic views of the judges must be reflected in their opinions. This is the strongest portion of the book. The argument is not one drawn from the outside but consists largely in the correlation of the arguments used by the courts themselves both in minority and majority opinions. The review of judicial legislation is so clearly featured that it cannot but disquiet even a conservative reader.

The later chapters discuss what may be the result should the legislature and executive be disposed to cut down the power of the judiciary. The author does not elaborate this portion of his discussion, but concludes that rather than arouse the other branches of government to drastic action the constitution of our courts should be changed. The expedient especially favored is the judicial recall. The recall of judicial decisions he declares would be subversive of our form of government.

Mr. Storey's book also starts with a discussion of the distrust of the courts, but he sees the remedy not in cutting down but in increasing their powers. The abuses which new conditions have brought call for reform, against which "all the forces of tradition, established habit and in many cases of personal interest are united."

First among abuses is "the law's delay," a characteristic which is beneficial so far as it discourages "hot blood suits" and insures mature deliberation but not to be defended when, as in America, it becomes an instrument for the obstruction of justice. The author suggests that the English practice be adopted by which a case cannot be put off by the attorneys because of conflicts in engagements. Cases should come off when scheduled even though this may lead, as in England, to the employment of senior and junior counsel.

Attorneys who institute frivolous or malicious prosecutions should be punished summarily by the court, but the chief relief in the number of cases brought must come by legislative action. Much has already been done here. Boundary disputes and insurance cases formerly filled the courts, but are now disappearing as a result of better legislation. Personal injury suits against common carriers and employers can largely be eliminated by the same means. Warm praise is given the employer's liability legislation, and laws making carriers insure passengers against accident are commended. Relief may come also through cutting down the length of trials by giving the judge greater power to control the examination of witnesses and the argument of counsel.

Unfortunately the delays before and during trial are too often only a beginning and the litigant must look to a succession of trials in appellate courts. The author advises a judicial organization which shall decide a case finally after one appeal and shall not allow a new trial where a mistake made involves no substantial deprivation of right. To remedy the complications arising from our system of state courts he advises the adoption of uniform laws. The last chapter discusses the lawyer's responsibilities in criminal law—both in the trial of cases and in shaping the law in the legislature.

One who wishes to modify and correct rather than to overthrow and reconstruct will find this latter book full of wise counsel. All who wish to understand the point of view and aims of the advocates of judicial changes should not neglect either.

University of Wisconsin.

CHESTER LLOYD JONES.

Rowntree, B. S., and Lasker, B. *Unemployment*. Pp. xx, 317. Price \$1.60. New York: Macmillan Company, 1911.

Much thus far written on the subject of unemployment has been vague in its facts and *a priori* in its methods, if not in its conclusions. Mr. Rowntree's book is not of this type. Like his earlier works, it is based on first-hand study of a local situation. The method of inquiry, as well as the assembling and classifying of facts, measures up to the most exacting requirements of careful work; and conclusions are so qualified as to be safely within the margin of truthful statement.

The study is a review of the problem of unemployment in York, an industrial city of 82,000 inhabitants. On June 7, 1910, a careful canvass of the unemployed of the city was made by sixty chosen agents. Subsequently a detailed and careful investigation was made of the cases recorded by these agents. Of these, 1,278 are described in the following six classes: Youths under nineteen years of age, men who have been regularly employed within the last two years, and are still seeking work, casual workers (male), workers in the building trades, the work-shy (males), and women and girls. Care is taken to emphasize the fact that more than one-half of the total number are habitually workers of the casual type, who suffer from unemployment and irregularity of work rather than from unemployment proper. This is defined as a state of things under which a person, who is seeking for work is "unable to find any suited to his capacities, and under conditions which are reasonable, judged by local standards." Of the unemployed lads, four-fifths of whom had a bad start in life, the majority were below the average in ability and character. Of the second and third classes mentioned (the two principal classes of the unemployed adult male workers), about half were men of good character and physique, while the others were defective in physical, mental or moral ways. In the building trades the unemployed were not a markedly inferior group; and the majority of the women were of good quality, morally and physically. "Leaving aside the work-shy, it may be roughly stated that about one-half of the unemployed in York were not in any way disqualified for work. . . . It is quite a mistake to regard the unemployed problem as primarily one of the character and efficiency of the workers. On the contrary, improved moral and increased technical ability, important as they are, can never solve that problem unless they are associated with wide industrial and economic reforms. Moreover, the defects by which some of the unemployed are handicapped are very frequently the direct outcome of unemployment in the past."

Among interesting suggestions looking toward reform are the following: a large measure of oversight for all lads up to the age of nineteen, with compulsory training during periods of unemployment; afforestation work, so regulated as to meet the ups and downs of the labor market; the decasualization of labor, i.e. the concentrating of all available casual work upon selected men, so as to keep them fully employed; and the decentralizing of town population by developing opportunities for cultivating plots of land in the country. Insurance is regarded as "only one of several measures necessary to lessen the hardships resulting from want of work."

The unemployed at first blush present themselves as an indifferentiated

group of those who live at the lowermost margin. The value of such a study as this is that it breaks up this mass into distinct groups showing specific ailments, each of which may be diagnosed and treated in definite ways.

ROSWELL C. MCCREA.

University of Pennsylvania.

Saileilles, R. *The Individualization of Punishment.* Pp. xlv, 322. Price \$4.50. Boston: Little, Brown & Co., 1911.

This volume is fourth in the list of foreign works on criminology selected for translation by the American Institute of Criminal Law and Criminology. The translation from the second French edition was made by Rachel Szold Jastrow. The material was prepared originally for a course of lectures before the College of Social Sciences at Paris in 1898, and appears substantially in the same form. There has since been much progress and the author, in the preface to the second edition, says: "On many points the volume no longer represents the views of contemporary science; on some issues it no longer expresses my own opinion, or at least not as I should now express myself if I were called to give my views." The change of views, however, both on the part of contemporary science, and of the author, is not fundamental but rather incidental modifications of the details of a system which was then in its initial stages but which has since become a generally established procedure.

The administration of justice by abstract formula was the product of the classic school of philosophy of crime. The arbitrary power of the magistrate was curtailed by the fixing of hard and fast limits, attaching a definite penalty to each specific crime.

While certain radical theories of the modern or scientific school of criminology have been discredited the theories as a whole have resulted in changes little less than revolutionary.

Throughout the modern world a change has come in ideas of criminal justice. To-day it is not the nature of the crime but the character of the criminal that is coming to be regarded as the proper criterion for dealing with the offender. Criminal law remains conservative, especially in the United States, and extra-legal means have been sought through which to obtain justice and at the same time preserve the forms of the law.

It is this individualization of punishment to fit the character of the criminal that the author has endeavored to sketch. He begins with a chapter on The Statement of the Problem, in which he makes clear the distinction between the old objective point of view in which the consequences of the criminal act were of chief importance, and the subjective, in which the character of the criminal constitutes the real social menace. Chapter two is called The History of Punishment, but deals with the conflict of views and their effects rather than a real historical narrative of punishment. Three succeeding chapters deal respectively with the classical, neo-classical, and Italian schools of criminology with special reference to the bearing of the theories upon punishment. The doctrine of responsibility is developed in the sixth and seventh chapters with an attempt at reconciliation between the theories of free will and determinism. The remaining

chapters are devoted to a discussion of legal, judicial, and administrative individualization.

Modern criminologists may dissent from some of the conclusions presented, but the principle of individualization as manifest in the treatment of juvenile offenders as well as in the methods of indeterminate sentence, parole and probation for adults, has become thoroughly established. The permanent value of the volume and the justification for its presentation to English readers lies rather in its historical contribution than in its ultimate solution of the problems with which it deals.

J. P. LICHTENBERGER.

University of Pennsylvania.

Scott, J. B. (Ed.). *Fisheries Arbitration Argument of Elihu Root.* Pp. cli, 523. Price \$3.50. Boston: World Peace Foundation, 1912.

As Secretary of State, Mr. Root took the leading part in framing the issues in the North Atlantic Fisheries Arbitration. As leading counsel for the United States before the special tribunal of the permanent court at the Hague in 1910 he made the chief argument in presenting the American side of the case. His argument has therefore a personal as well as a national interest.

The award settled a dispute which was long a sore point between the two great Anglo-Saxon nations, and is of more than local interest because of the important points of international law which it involved. Mr. Root's argument, while it must, of course, be an incomplete record of the claims presented, since no discussion is given of the arguments by the other American and by the English counsel, gives an excellent exposition of the points of law urged by the United States.

The argument proper is preceded by an introduction of one hundred and fifty pages by the editor which gives the historical setting of the controversy, a review of the negotiations leading up to the arbitration and an analysis of the award itself.

Then follows the four hundred page argument of Senator Root. The chapters arranged under the seven questions which were submitted for settlement are fine examples of cogent logic and easy description. Of course the interest of Americans tends to concentrate in the decisions on the Headlands controversy and the overruling of the American contention that the fishing privileges amounted to an international servitude. However well supported the latter contention is in the argument, the reader cannot avoid feeling that the decision in the award was in accord with substantial right. In the Headlands decision the rule established is less satisfactory, for while the effect of the decision is confined to the case under trial, and therefore does not touch the general rule of international law, it cannot but be felt that the confusion which still remains concerning jurisdiction in the bays from which American vessels are held excluded is unfortunate. The latter portion of the book is devoted to documents illustrating the various phases of the controversy at different times during the development.

As an accurate and compendious summary of the questions involved in the fisheries dispute and the American contentions in relation thereto, this volume takes first rank.

University of Wisconsin.

CHESTER LLOYD JONES.

Shuster, W. Morgan. *The Strangling of Persia.* Pp. lxiii, 423. Price \$2.50.
New York: The Century Company, 1912.

Russian interests and British trade explain the passing of Persian nationality. Mr. Shuster's account of his personal experiences as treasurer-general of Persia is an absorbing recital of the eighteenth century methods used by Russia and to a lesser degree by England to assure that Persia's efforts for her financial regeneration should fail. Though the appointment of the group of Americans who were asked to help lift Persia out of the slough of impending bankruptcy and partition was not one backed officially by the United States their departure, work and failure made Persia an object of American interest to a degree never before known. The net of local intrigue, treachery and foreign diplomacy of the Machiavellian order which the author details, shows that the partition of Poland has its twentieth century counterparts. Morocco, Tripoli and Persia, three Mohammedan states, are vanishing under the pretense of the needs of civilization championed by four of the great Christian powers. In the case of Persia the author shows the claim to be the merest pretense. The struggle for a constitution, the reaching out for self-government, the earnest efforts for abolition of official dishonesty, for taxation reform and efficient protection of property made by the Progressive party of Persia showed that the ancient empire had heard the call of the twentieth century and was determined to make for itself an independent place in the world's affairs. But this very advance made Persia dangerous to her powerful neighbors. Russia especially saw in the present weakness of Persia and in the strained relations of England and Germany the opportunity to take one step more in her approach to the Persian Gulf. In these days of the Hague Court and arbitration treaties such incidents as the recent diplomatic moves of Russia in Persia furnish a cynical comment on the depth of our boasted accomplishments in insuring justice and fair dealing among nations.

Except for the failure of the plans of the Americans through foreign interference, Mr. Shuster's account is one of brilliant achievement. To have been able in a short period of less than a year to put down a civil war of dangerous proportions, to reform one of the most corrupt systems of public finance which the world has known, and to change a chronic treasury deficit into a credit balance of almost a million dollars, is a signal evidence not only of Persia's earnestness in reform but of the ability of those whom she called to her aid.

CHESTER LLOYD JONES.

University of Wisconsin.

Simons, A. M. *Social Forces in American History.* Pp. xiii, 325. Price \$1.50.
New York: Macmillan Company, 1911.

It is extremely gratifying to social students that the interpretation of history is claiming the attention of so many writers of the present day.

The dynamic forces of civilization reside in the underlying social and economic conditions. Individuals who have been forced to the front by these conditions and who are the direct product of them have been given undue prominence as history makers. The greater and more important task of tracing the motive forces behind men and movements is, at least, now being undertaken seriously.

The author of this volume has made a valuable contribution to this form of history. He has endeavored to explain the most obvious facts of our American history in terms of social causation. He has not hesitated to rend the mask and expose the same interests behind the discovery, colonization and development of our country, which we find operating to-day, the desire for financial gain. The discovery of America was an accident in the quest for a new commercial route to the Orient. The colonization was motivated by financial corporations who sought to exploit new sources of revenue. Had the London and Plymouth companies been as successful as the East India Company, our history would have been vastly different. The Boston tea party would not have happened if the duty on tea had not been lowered to such a point that it made unprofitable the smuggling business carried on by John Hancock and others.

These are samples of the lack of respect the author shows for our treasured idealism. To many readers the method of interpretation will seem sordid and distasteful. The only question to be raised, however, is the validity of the facts presented. These have been somewhat difficult to secure. They have been gathered not from histories, but from contemporary literary sources and may be subject to the bias either of the writer or of the interpreter. But even if the facts in certain instances may prove to be distorted, the remedy lies in a re-examination of the material rather than in an abandonment of the method. The time has come when we are vastly more concerned with a correct understanding of the historic process than with the preservation of traditions, and the author has accomplished his purpose at least so far as to place the emphasis upon a realistic interpretation.

The book is well written, covers a wide area, embracing most of the important epochs of American history, and deserves a careful reading by all those who prefer historic fact to historic fiction.

J. P. LICHTENBERGER.

University of Pennsylvania.

Smith, Justin H. *The Annexation of Texas.* Pp. ix, 496. Price \$3.00. New York: Baker and Taylor Company, 1911.

In historical research, as well as in migration of settlers, recent years have witnessed a veritable Texas-ho! Thus it may be in place to note the relation of Dr. Smith's comprehensive work to other explorations in the same field.

J. S. Reeves, "American Diplomacy under Tyler and Polk," 1909, exploited much of the source material on the Texas question accessible within the United States. E. D. Adams, "British Interests and Activities in Texas," 1910, was the result of similar researches in the Public Records Office, London. Various periodicals, including especially the *Quarterly* of the Texas State Historical Association, have published and still continue to publish worthy contributions based upon materials accessible in Texas and Mexico. Many further studies along similar lines have now been made possible by the publication of the "Texan Diplomatic Correspondence" and the "Secret Journals of the Senate, Republic of Texas."

Dr. Smith has studied much of the above-mentioned source material more

intensively than has been done before, and has profited by the further advantage of a well-filled background afforded by a comprehensive study of the whole field.

The French archives for the period are not accessible but the author feels that all of the essential documents relating to the French policy have been discovered in the American, Mexican and British archives, or printed in French periodicals.

Dr. Smith states the conclusions of his study in twenty-one chapters running in chronological-topical gamut from "The Beginnings of the Annexation Question" to "Annexation is Consummated." Special students in the field may find and are finding some errors of detail in the book, but unless new and unexpected sources of information are discovered, Dr. Smith's findings are not likely to be seriously modified in their larger lines. Nor does he differ greatly from students who have passed that way before him. *Par exemple* the British policy, one of the newest phases presented by him: As set forth by the documents in the Public Records Office this is interpreted by Professor Adams and by Dr. Smith with only a difference of emphasis. The former saw in the British interest in Texas only a wish half-heartedly pushed. The latter sees an intensity of purpose that develops into a definite, persistent policy.

The great value of Dr. Smith's book is that it represents original research, wide and deep. What others have done by parts he has done as a whole. His volume probably comes as near being "the final word," as a work of its scope can well be in these days.

R. W. KELSEY.

Haverford College.

Smith, Samuel G. *Social Pathology*. Pp. viii, 380. Price \$2.00. New York: Macmillan Company, 1911.

This volume includes a number of brief studies in social mal-adjustment. The range of topics treated is a wide one including such problems as poverty, crime, feeble-mindedness and prostitution. The number of subjects discussed makes the book almost encyclopedic in nature. The different sections might well have been handled by specialists in the various fields. However, the treatment by one writer has the advantage of securing a consistent point of view and a better proportion than might otherwise be possible.

It is the opinion of the author that the ordinary studies in what is known as degeneration commence too late. "It is easy enough," he maintains, "to show that the pauper, the criminal, and the insane may be included under the vague term, 'degenerate.' The point to discover is where the departure from normal human life began, and what were the malign influences that caused it." This is the main purpose underlying the present volume. The premise back of each of the special mal-adjustments studied, is "that most children are well born, and are afterward ruined by physical accident or disease, or else by the failure of the home and the state." It is the opinion of the author that "the doctrine of heredity has been largely overworked. Environment has not been set forth in suitable terms."

In the opening chapter, the author states the purpose of his study is "not to breed pessimism, but to furnish a rational ground for faith in the future of the world. The diseases of society, like the diseases of the human body, are to be studied that remedies may be found for them where they exist, but most of all, that by a larger vitality and greater practical wisdom the number of diseases may be reduced to the lowest terms and we may set ourselves to social tasks with the ideal of finally conquering them althogether."

The method of presentation followed is first to study the nature of each social disease discussed and then to suggest the respective remedies. In addition to the treatment of the social diseases included under the broad terms, dependency, delinquency and defectiveness, are three chapters dealing respectively with Social Sanitation, the Inspection of Institutions and Social Statistics. These, while suggestive, occupy space which might have been devoted to a fuller discussion of some of the many phases of social pathology which precede. This suggests what is perhaps the chief criticism of the book—an attempt to cover too wide a field. While well done in the main, each treatment is too brief for the special student of the problem. The value of the book is enhanced by a bibliography of works used in its preparation as well as by an exhaustive index.

FRANK D. WATSON.

New York School of Philanthropy.

Stockton, F. T. *The Closed Shop in American Trade Unions.* Pp. xii, 187. Baltimore: Johns Hopkins Press, 1911.

This is a sympathetic yet critical, detailed yet readable monograph on the origin and subsequent development of the closed shop principle in American trade unionism. The volume shows the evidence of first hand study as well as of considerable library research. In the words of the author, "the primary aim of the present study is to set forth the facts concerning the closed shop." In so doing the various forms of the closed shop—the simple closed shop, the extended closed shop, and the joint closed shop—are explained and discussed in chapters with the above captions. Throughout the relative importance attached to the enforcement of the closed shop principle at various stages of our industrial development and the efforts which employers have made from time to time to check its operation, are described.

In some ways the closing chapters of the book are the most interesting, since they discuss the social aspects of the closed shop as well as its value as a trade union device. On the latter point, Dr. Stockton summarizes, among others, the following arguments, usually advanced in defense of the closed shop principle:—The closed shop makes possible the enforcement of discipline over union members; it makes collective bargaining truly effective; it secures in all cases the exclusion of "scabs" who might secure employment were non-union men not discriminated against. The presence of non-union men is likely to make for a complete non-union shop, since, other things being equal, non-union men are likely to be favored with promotions, etc., over union men; the closed shop principle is just in view of the legal principle known as the fellow-servant doctrine.

It is the conclusion of the author that "the closed shop is used by trade

unions as a device to gain certain ends. It is not an end in itself. It cannot be explained on the grounds of unreasoning prejudice against non-union men. It is an utterly mistaken view to regard it as a mere 'passing phase' of unionism. It is also probably safe to say with Mr. John Mitchell that 'with the growth of trade unionism in the United States the exclusion of non-unionists will be more complete.' The sympathetic yet critical spirit with which the author has treated his subject cannot be better illustrated than by quoting the two closing paragraphs of his monograph, in which he summarizes the social aspects of the closed shop:

"If it be true, as has been said, that 'the excesses of unionism which have done and are still doing the greatest injury to the prospects of the movement are all traceable to the use of the arbitrary and coercive power of the closed shop,' it is equally true that the closed shop is responsible for the greatest advances made by unionism. On the one hand, the closed shop, if universally enforced, would afford unions the opportunity to commit gross excesses by virtue of the power lodged with them. On the other hand, the closed shop opens the way to the highest and most efficient form of collective bargaining.

"Since regulation of employment is a matter of public concern, and since there is danger that trade unions may become arbitrary in exercising control over a trade, it has been suggested that the state should control their 'constitution, policy and management.' In this way requirements for admission to union membership and working rules could be regulated. State regulation, however, is likely to be introduced only after the closed shop has been widely enforced. At present, in the majority of trades, it is but partially enforced, and only with great difficulty."

FRANK D. WATSON.

New York School of Philanthropy.

Toulmin, Harry A. *Social Historians.* Pp. xi, 176. Price \$1.50. Boston: R. G. Badger Company, 1911.

The title of this book is misleading. It should be "Literary Historians," for the term "social" has now attained a definite connotation. The author, a young university man with a deep interest in literature as it portrays the conditions of modern life, reviews enthusiastically the new fiction of the South—land of romance, conflict and unrealized possibility. In five essays, those writers of talent whose permanent achievement rests upon their knowledge of and sympathy with the phases of life they depict, are given idealistic, if rather wordy, appreciation.

The first discusses the works of Thomas Nelson Page, the versatile novelist of Virginia, who writes of the stately Colonial South, of the chivalry of plantation life "before the war," of the time of "armed hostility," of the bitter suffering and desolation of the dark Reconstruction era, and also faithfully portrays present conditions, with glimpses into the policy of the future. These pictures, drawn with genial good nature and broad understanding of noble men and women, Mr. Toulmin considers human documents of high value.

In very different manner, we find, George Washington Cable has portrayed a narrower section of Southern life, that of Mississippi and of the Louisiana

Creole. We have in these novels, not alone detailed observations of actual conditions, but the inspired teaching of a religious prophet, who laments the evils of the times, and denounces the laxity of moral and social standards that follows race mixture.

Charles Egbert Craddock (Mary N. Murfree) is the novelist of the mountain regions of Tennessee. She depicts minutely and imaginatively the primitive, emotional life of that strange division of our native stock, arrested in development by its narrow backwoods environment. The elemental motives and peculiar speech and customs of these, our able but neglected brothers, are delineated in a realistic way. The essayist feels that we have in these books a "contribution to the science of social organization as well as to the creation of an artistic and literary success."

James Lane Allen is described as the "painter of the Old and New" in Kentucky life. His books deal with "the sturdy early pioneers," the quaint and peaceful anti-bellum life, and the disastrous "results of civil disunion;" but they also reveal deep insight into the life of the new regime. Mr. Toulmin declares that Allen has broken entirely away from "sectional narrowness." As an evolutionist, with full tolerance toward men, he pictures the conflicts and failures of humanity about him, and shows forcefully "the contest of circumstances and environment versus nature."

Joel Chandler Harris possesses the rare gifts of deep human understanding and a wholesome attitude toward life. Through his simple-hearted negro interpreters, the animal and vegetable realms become the dominions of man, and the charming stories furnish a medium for the expression of homely humor, and for genial criticism of the life and foibles of men. Harris has done much to explain to the world the inner negro consciousness, and to popularize the strange folk lore and beautiful melodies of that deeply emotional race. "Uncle Remus" has personified for us the better side of race relations in the old regime. The tales savor of the soil and are filled with the lure of the land of our youth. A source of perennial delight to the children, their broad sympathy has extended the author's keen interest in life, and carried happiness to many older folk. Harris has had a true mission, like the novelists of the South, in giving a comprehensive picture of the vista of life that has been opened to him.

We might admit with the author of these essays that historians and philosophers come and go, but there is "no more intrinsically worthy contribution to the annals of the nation than the perpetual embodiment of a little known section of the life of the people." Of these new makers of literature, who seek to express her social life, the South may feel justly proud.

FRANCIS D. TYSON.

New York School of Philanthropy.

Uyehara, G. E. *The Political Development of Japan, 1867-1909.* Pp. xxiv, 296. Price \$3.00. New York: E. P. Dutton & Co.

Students of political institutions will consider it a rare good fortune that one so thoroughly conversant with political science and the workings of government in the different countries of the world should give us this treatise on The Political

Development of Japan. After the brief introduction discussing the political mind of the nation, or its race psychology, the author takes up a short historical account of the institutional history of Japan through the days of feudalism and the Shugunate to the arrival of the American fleet under Commodore Perry and the final restoration of the Mikado's government in place of the Shogun. He describes how this brought about the substitution of a bureaucracy for feudalism and the proclamation of the "Charter Oath." He then outlines the various movements towards the establishment of constitutional government until the adoption of the present constitution in 1889. The second part of the book entitled "Some Theoretical Aspects of the Constitution," Dr. Ueyehara devotes to the various parts of the constitutional machinery leaving to the third and last division an account of "The Working of the Constitution," as instanced by its political and historical development. The book has all the facilities for ready consultation, such as a carefully prepared table of contents in the beginning with a chronology of recent important events. The extremely complete and well-prepared index is preceded by an appendix containing the official translation of the constitution, a list of the ministerial changes since 1885, and a list of the members of the privy council with the date of appointment in each case. Throughout the volume interesting and carefully selected notes abound. It would be more useful to the European reader were it possible to ascertain in every case whether the reference is to a work in a European language or to one made available by translation. The reviewer found something of value in each page.

In substance, Dr. Ueyehara's book vividly portrays to us the real heart of Japan's political conditions, that is, the absolute power of the Emperor.

In the Japanese mind the very conception of the state centers in the personality of the Mikado. On account of this worship of his person, and because of tradition, his power is exercised by a group of advisors forming his privy council. Within this privy council is a group of especially powerful statesmen known as "elder statesmen." (Dr. Ueyehara barely alludes to this group of elder statesmen.) The bureaucracy is carried on by a cabinet of bureau chiefs selected by the Emperor, which of course means by his counsellors. Then we have the Diet composed of two houses.

The rights of the Diet depend upon the constitution granted by imperial rescript and amended in the same fashion. The whole function of the Diet, according to its spirit, is to consent to or concur with the laws which the Emperor is looked upon as making. The administration makes every effort to secure the election of representatives amenable to its will.

The powers which the house possesses are first, the influence over public opinion exercised by its debates with which the government may not interfere. This influence is slight. The second instrument of considerable power is that of interpellation of the ministry. But by far the most important means at the disposal of the Diet is the address to the Emperor.

The great power of the Japanese State is due to the popular belief in the all-pervading wisdom of the Emperor. Those who actually do not believe in the divine right of the Emperor follow the same procedure as if they did so that the whole force of the nation can be and is centralized in an expression of policy

which the ministry speaking through the Mikado utters. Japan of to-day is a political anachronism capable of acting in foreign relations with terrific force because the Emperor can command the support of every subject.

The consideration of the peculiar structure of the Japanese State makes it apparent that this system can only prevail as long as a bureaucratic ministry and the Emperor's privy council are held independent of party organization. It has, therefore, been the fundamental policy of conservative Japanese statesmen to crush out parties and to refuse to recognize them in forming the bureaucratic ministries. To this effect the severest penalties have been imposed upon party organization, but in spite of the government's plans and its bribery and bestowal of places; in spite of the use of appointments in the upper house which it holds at its disposal the tendency to the formation of parties is so strong that almost every election has found a strong opposition to the government in the lower house. And when it was necessary for some important reform to receive the consent of the Diet, such as the imposition of an additional taxation, the government has been forced to accord a certain recognition to party organization.

Dr. Uyehara's book is not intended for popular reading. Only the student of political affairs will understand it but he has done a real service in presenting such an interesting, scientific and searching analysis of a great world power that differs in its ideas of government so greatly from our own.

ELLERY C. STOWELL.

University of Pennsylvania.

Van Hise, Charles R. *Concentration and Control—A Solution of the Trust Problem in the United States.* Pp. xiii, 288. Price \$2.00. New York: Macmillan Company, 1912.

Dr. Van Hise's latest book, "Concentration and Control," is divided into five chapters: One, The General Facts regarding Concentration; two, Some Important Illustrations of Concentration; three, The Laws regarding Cooperation; four, The Situation in Other Countries; five, Remedies. Under each of these chapters come a series of sections which are further subdivided into groups. The arrangement is wholly admirable.

Throughout the entire volume, though especially in the first chapter, the reader is constantly confused by the use of the word "Concentration," a term which Dr. Van Hise has not considered it necessary to define. At one time there is obviously intended the increasingly large scale of production; at another, equally obviously, the author is dealing with the problem of combination. Thus the section headed "Subdivision of Labor" (p. 9) refers certainly to the former, while the saving of the cost of salesmen briefly discussed (p. 14) is clearly not an economy or advantage of large scale production but of combination. This instance is selected as an illustration of a confusion to be found in the volume from cover to cover. Concentration as ordinarily understood refers to increase in size and decrease in the number of plants engaged in the manufacture of an article, a phenomenon which Dr. Van Hise uses twenty pages of tables to exhibit. Parenthetically it may be remarked that these census tables had better found place in an appendix. Their essential facts could have been summarized in a couple of

pages. While in dozens of places accepting this idea of the meaning of Concentration, in an equal number Dr. Van Hise has interpreted this term as a synonym of combination. He has lumped together the advantages of large scale production and of combination and has styled them most inaccurately the advantages of concentration, apparently assuming them to be the same. Now no solution of any problem,—and Dr. Van Hise's book by its sub-title purports to be a solution of the Trust Problem,—was ever furthered by confusing two entirely distinct phenomena and calling them by the same name. One of the things which has most tended to prevent clear thinking on the subject of the trusts is to regard the advantages of large scale production as peculiar to the trust. Into this pitfall Dr. Van Hise has fallen "head over heels."

Turning aside from general criticism, the book contains numerous inconsistencies, omissions and questionable assertions, two or three of which may be here referred to. Thus we learn that no list of Trusts is available (p. 35). It seems peculiar that Dr. Van Hise is apparently unfamiliar with the compilations of Mr. Moody, Byron W. Holt or Luther Conant. Again, *People vs. North River Sugar Refining Company* "was the case in which the trust was first brought before the court" (pp. 173-174). It may be pointed out that some time before this the American Cotton Oil Trust had been assailed in the courts of Louisiana. From page 69 one gleanes the information that "The great period of the Trust was from 1888 to 1897." Many, like the reviewer, will doubtless be interested to hear the names of the Trusts formed in this period. Dr. Van Hise mentions in this connection the Standard Oil, Cotton-seed Oil, Sugar and Whiskey Trusts. The first was formed in 1879 succeeded by a new agreement in 1882; the second in 1884 and the two last mentioned in 1887. Besides these the National Linseed Oil Trust was organized in 1885 and the National Lead Trust in 1887.

A sketch of the Standard Oil Company (p. 104 ff.) that takes no account of the Trust Agreement of 1879 is open to serious criticism, as is an account of the formation of the Steel Corporation (p. 112) that utterly disregards the stock market factor emphasized by the Commissioner of Corporations, and the peculiar situation that enabled Mr. Carnegie to dictate his terms in the organization of this corporation. Nor does the section in chapter IV on International Agreements command much commendation, failing to consider, as it does, the European Agreement in the explosives trade, and the A. J. A. G. Agreement in the aluminum industry. It is typical of the general character of the volume that in his chapter on remedies Dr. Van Hise proposes disintegration as an extreme remedy when a corporation is "found to be a monopoly and therefore to be unreasonably in restraint of trade" (p. 253), apparently forgetting that, in his enthusiasm for cooperation, he has earlier pointed with much gusto to the ineffectual results of such disintegration in the case of the oil and tobacco combinations. (Pp. 181 ff.)

Except for chapter III the student of the combination movement will find that the book contains comparatively little that is new and much that is old. Chapter III, so far as the reviewer's knowledge of its largely legal content goes, is deserving of a large share of praise. The same can hardly be said of the other chapters. The final one on remedies is beautifully indefinite as are most remedies,

panaceas and solutions. Dr. Van Hise regards his price regulation as so simple that in spite of the numerous references in the volume to recent investigations the author must have missed the testimony of Mr. Farrel on that subject.

This review has attempted to point out certain specific instances of careless, inaccurate work. But Dr. Van Hise may even more justly be charged with thoroughly unscientific work. He has made no attempt carefully to analyze the facts pro and con and to draw conclusions based on those facts. On the contrary he has approached his subject with a predetermined view,—that competition is bad, anarchical, etc., and cooperation good. He has utilized only the facts that support his position and has either thrown into the background or entirely excluded those that refute it. As a result the book amounts merely to a glorification of cooperation. It is peculiarly unfortunate that one of Dr. Van Hise's eminence should have placed before the public a volume which is not merely inaccurate and contradictory but which is so highly colored by the "cooperation good, competition bad," viewpoint that it is an absolutely unfair consideration of the trust problem.

W. S. STEVENS.

Columbia University.

Vedder, H. C. *Socialism and the Ethics of Jesus.* Pp. xv, 527. Price \$1.50. New York: Macmillan Company, 1912.

Social theory, poetry, economic principles, ethical precepts and religious dogma are scattered indiscriminately through a volume whose title should be "The Evolution and Christianization of Socialism." Slightly more than half of the volume is devoted to the history of socialism in the world. Beginning with the Reformation, the author discusses the events leading up to the French Revolution; the social theories of Saint-Simon, Fourier and Louis Blanc; the work of LaSalle and his followers in the construction of German socialism; the life and writings of Karl Marx; the anarchistic doctrine of Proudhon and Kropotkin; the growth of socialism in England from the Manchester economists to current municipal socialism; and the organization and development of socialistic and communistic communities in the United States, including the work of Henry George. The next chapter, *The Ideals of Socialism*, introduces an element of ethics and explains on the application of socialistic principles to modern problems. Chapters 9 and 10 analyze the social teachings of Jesus, with their application to modern life; Chapter 11 details *The Social Failure of the Church*, and Chapter 12 analyzes *The Attitude of Churches and Ministers to Social Questions*. In short, the first two-thirds of the book deals with socialism pure and simple, while the remaining one-third covers Christianity and its failure in the modern world.

For the sake of unity, the author should have written two books—one on Socialism, the other on the Ethics of Jesus in their Relation to Modern Life—because, in his treatment of the two topics of the present volume, he separates them almost completely, and employs different methods in their presentation. Although the book is decidedly readable, it will hardly commend itself either to the scientific student of socialism or to the analysts of social problems and Christian ethics.

SCOTT NEARING.

University of Pennsylvania.

Walling, W. E. *Socialism as It Is*. Pp. xii, 452. Price \$2.00. New York: Macmillan Company, 1912.

Mr. Walling's book is not for beginners: it is for the serious-minded and widely-read student of the international socialist movement. It differs from other books by socialist authors in that it contains no exposition or defense of the fundamental principles of socialism and makes no effort to effect the conversion of the reader. In brief the volume is a detailed and thorough-going analysis of the labor, social reform and socialist parties of England, France, Germany, Belgium, Italy, Australia and the United States.

The greater portion of the argument is directed against tendencies towards state socialism and social reform outside of the socialist party and towards reformism, opportunism, or revisionism within that party. Jaurès in France, Vandervelde in Belgium, Turati in Italy, MacDonald and others in England, and Berger in the United States, are the leaders of those forces against which the author levels his attacks. Incidentally he pays his respects to the radicals, progressives and insurgents by concluding that their "reform programs, however radical, are aimed at regenerating capitalism" (15), at bringing about "a partnership of capital and government" (31).

The author throughout occupies the middle ground between the revisionists on the one hand and the syndicalists on the other: in short he follows closely Bebel and Kautsky, and judges all socialists and socialist activities by their standards. He is the staunch champion of that type of socialist party which is "unwilling to compromise the aggressive tactics indispensable for the revolutionary changes it has in view" (130).

The keynote of the discussion is found in the author's conclusion that "The socialist policy requires so complete a reversal of the policy of collectivist capitalism [state socialism], that no government has taken any steps whatever in that direction. No governments and no political parties, except the socialists, have any such steps under discussion, and finally, no governments or capitalist parties are sufficiently alarmed or confused by the menace of socialism to be hurried or driven into a policy which would carry them a stage nearer to the very thing they are most anxious to avoid." Consequently a revolutionary socialist movement holds the only hope of salvation for the working-class.

The volume is an excellent analysis of socialist tactics, in fact the best that has ever been published, not because of the views of its author, but because it is a most comprehensive treatment of that phase of socialist propaganda. It contains much with which socialist tacticians will disagree, while here and there are to be found statements which will also meet with the disapproval of the casual reader. An instance of this is his declaration that "the revolutionary policy of the leading socialist parties has not become less pronounced with their growth and maturity as opponents hoped it would" (248).

Stanford University.

IRA B. CROSS.

Watson, David. *Social Advance*. Pp. xxi, 336. Price \$1.50. New York: George H. Doran Company, 1911.

One of the most significant signs of social advance is the awakening of the church to its social responsibility. The present volume is the outgrowth of a series of

lectures delivered on the sociological foundation in the divinity school in Edinburgh University. The author's breadth of view is indicated in his two leading propositions in the first chapter. First, that what is needed most at the present moment is thought, inquiry, the collecting of social data, earnest study of social phenomena. "A social problem is half solved when it is understood." And, second, that social progress is due to a variety of contributing factors, spiritual, ethical, social and economic. Religion, education, art and literature promote the spiritual side of social advance, while legislation, philanthropy, science, commerce and industry promote the material side.

Chapters are devoted to the Religious Factor in Social Advance, The Ethical Factor, The Economic Factor, The Political Factor, Social Desiderata, a Program for To-day, and The Church's Responsibility and Opportunity. While the author is careful to explain that none of these factors can be considered independently of the rest, there is, nevertheless, an apparent lack of appreciation of causal relation between certain ones. They are considered rather as so many independent integers to be calculated in the sum. Ethical and even religious standards are to such a large extent determined by material conditions that they figure rather as derived or dependent factors than as original and independent ones. Having been formed they become influential factors.

The chapter on a Program for To-day, is comprehensive and constructive. The point of view is that of the social engineer. The best method of keeping humanity going in the right direction is not to fence the road but to improve the pike.

The spirit of the last chapter on The Church's Responsibility and Opportunity is best gathered from a few quotations. "No man now goes to church in order to appear respectable or devout, and that surely is a gain. Conduct is now the test of life and the measure of a man's faith." "The Church in Scotland never made a greater mistake than when she sanctioned mission halls for the poor and churches for the well-to-do." "We must scrap our old machinery, if necessary, in the ecclesiastical as well as in the industrial world."

The book is written primarily for religious leaders and will lead inevitably to an enlarged and social point of view. Another good thing has come out of Scotland.

J. P. LICHTENBERGER.

University of Pennsylvania.

Weyl, Walter E. *The New Democracy.* Pp. viii, 370. Price \$2.00. New York: Macmillan Company, 1912.

The appearance of this searching essay on the political and economic tendencies in the United States, is most timely. The author devotes the first half of his book to an explanation of the evolution of a plutocracy in this country. In his analysis of American history from the Declaration of Independence to the present, he conclusively shows that we neither possessed a socialized democracy in 1776, nor have we subsequently lost one. He emphasizes the fact, sometimes overlooked, that at the time of the founding of our government we did not have institutions, conditions, or habits of mind upon which such a socialized democracy

could have been built. The habits of mind then obtaining were not destined to be soon changed. "Our conquest of the continent, though essential to national expansion, and even to national survival, did not aid such a democracy, except in so far as it provided for it an eventual material basis. On the contrary, the economic, political and psychological developments inseparably connected with the struggle with the wilderness worked against the immediate attainment of a socialized democracy, and led to wild excesses of individualism, which in turn culminated in the growth of a powerful and intrenched plutocracy."

The second half of the volume is devoted to a study of "The Beginnings of a Democracy," which Dr. Weyl believes is in the throes of being born. He maintains that we are just now beginning to realize that our present acute social unrest is not due to an attempt to return to the conditions and principles of the eighteenth century, but is merely a symptom of a painfully evolving democracy, at once industrial, political, and social. In the author's words, "We are beginning to realize that our stumbling progress towards this democracy of to-morrow results from the efforts, not of a single class, but of the general community; that the movement is not primarily a class war, but, because it has behind it forces potentially so overwhelming, has rather the character of a national adjustment; that the movement does not proceed from an impoverished people, nor from the most impoverished among the people, nor from a people growing, or doomed to grow, continually poorer, but proceeds, on the contrary, from a population growing in wealth, intelligence, political power, and solidarity. We are awakening to the fact that this movement, because of the heterogenous character of those who further it, is tentative, conciliatory, compromising, evolutionary, and legal, proceeding with a minimum of friction through a series of partial victories; that the movement is influenced and colored by American conditions and traditions, proceeding, with but few violent breaks, out of our previous industrial, political, and intellectual development and out of our material and moral accumulations, and utilizing, even while reforming and reconstituting, our economic and legal machinery. It is a movement dependent upon a large social surplus; a movement which grows in vigor, loses in bitterness, and otherwise takes its character from the growing fund of our national wealth, which gives it its motive and impetus. Finally, it is a movement which in the very course of its fulfilment develops broad and ever-broadening industrial, political, and social programs, which aim at the ultimate maintenance of its results."

The foregoing quotation excellently summarizes the main conclusions of the author. His analysis of the past and present conditions and tendencies in our political and economic life is, in the opinion of the reviewer, sound. Dr. Weyl throughout shows not only an intimate personal knowledge of many of our modern social problems and a familiarity with the wealth of data now accumulating in the social sciences, but, above all, a broad scholarship and keen power of analysis.

Possibly the greatest criticism of the book is no more than a mild regret that the author selected as a title for his last chapter the question, "Can a Democracy Endure?" Such a query comes in the nature of a shock to those who have followed the splendid but not blind spirit of optimism that pervades the volume. We agree with the author that for the time being the possible dangers that might

wreck a democracy are "too shadowy and hypothetical to justify any slackening of our progress towards a socialized democracy."

FRANK D. WATSON.

New York School of Philanthropy.

Wicker, Cyrus F. *Neutralization.* Pp. viii, 91. Price, 4s. London: Oxford University Press, 1911.

There is presented within the small compass of this treatise a very readable account of a phase of the new internationalism which is of large and growing interest and importance.

Part II, by far the longest of the book's four parts, gives a concise statement of the application of the principle of neutralization to nine cases of sovereign, or near-sovereign, states, to two provinces or dependencies, and to nine bodies of water. This showing is impressive in view of the fact that the first instance of genuine neutralization dates back not quite one century; and it becomes doubly so when viewed from the point of view of the success its various applications have met with.

The familiar examples of Switzerland, Belgium and Luxembourg are well used by the author to emphasize this success, and to show that despite the ruthless attacks of Napoleon III and Bismarck, in times of "blood and iron," namely, in 1859, 1866, and 1870, these small international houses, founded upon the rock of neutralization, withstood the tempests which raged around them.

The partial or attempted application of the principle of neutralization to Poland in 1791, to six free cities of the Holy Roman Empire in 1801, and to Malta in 1802, as well as the failure of genuine neutralization in the case of the free city of Cracow in 1846, are used as illustrations of the thesis that neutralization, to be successful, must be backed up by a strong and independent government within the neutralized state, and by "a sufficient guarantee" on the part of the neutralizing powers.

This "sufficient guarantee," the author maintains, must be a convention, not only to respect the neutrality, but to cause it to be respected (*respecter et faire respecter*); and he believes that such a guarantee extended to any part of the world by the United States, Japan, Great Britain and Germany, would be sufficient, either in itself, or through the adhesion of other powers.

A lucid survey of the objects, difficulties, duties and benefits of neutralization, as illustrated by historic examples, is made the basis of a persuasive appeal for the extension of the principle, especially on the part of the United States as regards the Philippines; while the example of the Congo Basin and the American demand for the Open Door in China are used as arguments for a liberal tariff policy as the *sine qua non* of a successful neutralization of those Islands. The United States has made a good beginning in the furtherance of neutralization, our author thinks, in the part it has played in the Berlin Treaty of 1885, the Hay-Pauncefote Treaty of 1901, and its proposal of 1910 for the neutralization of the Manchurian railways; only let it continue this good work, and induce South America to follow the example, and the problem of increasing armaments, he believes will be effectively solved for the Western World at least.

Without detracting in the least from the author's strong statement of the benefits and possibilities of neutralization, it may be said that his alluring prospect would seem to have a more substantial basis if it rested upon, not only a positive guarantee, but a guarantee to which the entire Family of Nations would adhere. The lesson taught by Russia when it disregarded the neutralization of the Black Sea at a time when the other guarantors were occupied with great wars near at home, is an illustration of the pressing need that nothing less than the guarantee of all the powers in conference at The Hague shall stand behind existing and future applications of the principle.

WM. I. HULL.

Swarthmore College.

Wood, M. E. *The New Italy.* Pp. xiv, 406. Price \$1.50. New York: G. P. Putnam's Sons, 1911.

Mr. Garlanda seeks to give his countrymen an illustration of an ideal government. The United States is taken as a perfect model. American institutions are compared with those of Italy. This he does in the guise of a "Yankee," and his book in the original text is called "Letters of a Yankee." The author believed that these letters coming from an American were sure to call out a responsive audience. The translator says that "the assumption was justified." Mr. Garlanda follows the idea of Mr. Lowes Dickinson in his "Letters of a Chinese Official." Mr. Garlanda's book covers a wider field, is more voluminous, goes further into details, but lacks the point, particularity and cleverness of the English work. A few pages will suffice to inform the reader that the book was not written by an American. In many instances the author seems to be badly misinformed as to existing conditions in this country.

The book opens with a flowery description of Italy, such as an Italian only can utter. Then follows a brief history of the Italian Revolution. A short letter on Elements of Centralization precedes the letter on the Italian Fiscal System, which is the fourth of the series. In this fourth letter the author shows a profound knowledge of the subject. The history, system, and administration of the revenue raising department of the Italian government are well explained. The author cleverly boils down the present system in Italy where he says: "For her fiscal system, Italy took here a little and there a little, from all sides. I verily believe that she gathered together all the taxes that were ever applied, or even ever imagined, in whatsoever part of the earth."

After this comes a comparison of government control and supervision of corporations. The American system is the ideal—the Italian, antiquated, unjust, oppressive. These comparisons are especially amusing to Americans. In decrying the Italian system, Mr. Garlanda states exactly what the American people have been endeavoring to do for many years—what he calls unjust, antiquated and oppressive may be found in the latest federal and state statutes of this country and in proposed legislation. The author seems not to have kept abreast with current events concerning corporations in this country, for if he had he might well have reversed his comparisons.

The Church and State, Education and Art, Lynch-Law and Mafia, Courts, and Family Life are among the subjects of his letters.

A somewhat startling fact is brought out in the letter entitled "The Army." The Italian African campaign (Abyssinia 1896) is reviewed and the defeat of the Italian army is attributed to the personal ambition of the commander-in-chief, General Baratieri. The Italian public will surely want to hear more of the "matters not yet published" and coming from "sources absolutely trustworthy."

"The Political Organization" is the topic of the sixteenth letter. This letter is apt to mislead the Italian readers. The author is agitating and encouraging in political parties exactly what this country is seeking to destroy. The lack of organization and party work in Italy with which the author would find fault, certainly speaks well of the Italian civil service. If "Yankee" will investigate further along the lines of "patronage" he will discover what holds the "dominant parties" together. And what will many good Americans say when they read on page 319: "There is no self-respecting American who does not belong to a party, and generally to one of the two dominant ones, the republican or the democratic." (?)

The translation by Mr. Wood is a masterpiece. He keeps closely to the original Italian text, and to those familiar with Italian his work will be greatly appreciated. The translation of the description of the "Latifondo," given in a footnote to a letter on that subject deserves high commendation.

FIGURELLO H. LA GUARDIA.

New York,

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THE RECONSTRUCTION OF ECONOMIC THEORY

By
SIMON N. PATTEN, Ph.D.
Professor of Political Economy
University of Pennsylvania



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THE RECONSTRUCTION OF ECONOMIC THEORY

INTRODUCTION

Last spring a fellow economist asked what I expected to write next. I replied "a book on progress." He then expressed regret that I was deserting economic theory and was kind enough to say that I was one of those who had aided the advance of economic thought. To this I said that my last book on economics was a failure, and having realized this I resolved to write no more books on economic theory until I could see some attainable goal. We discussed this point but parted without agreement. Soon after I met a friend who said, "I am interested in the referendum and the initiative." "I am not," I replied, "the American people should decide what they want to do before they try to settle how to do it." "What is the use," he retorted, "of knowing what you want until you know how to get it." While I was thinking over this conundrum I had a conversation with another friend over the conflict within the Republican party. When our differences became manifest, he said that I was growing conservative while he was becoming more radical. I replied that the real difference was that he was revolutionary while I was evolutionary.

These conversations led me to realize that concrete problems are shaping themselves in a way that only better theory can solve. Public opinion is not to-day what it was ten years ago when my "Theory of Prosperity" saw light. There is a new setting to every national problem and a clearer perception of each issue. Out of it must come a thought development that will force a better industrial adjustment.

My determination to restate economic theory was strengthened by a realization of the changes in attitude wrought by my recent development. While a student in Germany I became imbued with the German view and came home hoping to help in the transformation of American civilization from an English to a German basis. Like other returning students, I thought the last word on all subjects was in German. This attitude led to a wrong estimate of the contributions of English economists and to a neglect of the antecedents of

the ideas we were striving to express. It is a German axiom that German thought is the continuous expression of the best in the world's civilization and that in it are to be found the antecedents and basis of a modern development. I was carried away by the brilliancy of this thought and viewed the past as a series of victories of the Germanic race. From this concept my best thought has come as well as that of other American economists. But when applied to economics it leads to a misinterpretation of the facts. Economics is English both in its origin and development. Its ideas are not German either in its recent or earlier development. German economists have followed the natural trend of German thought in seeking economic origins in the race history of which they are a part. This limitation takes from their conclusion the weight American students sought to give them and forces a reconstruction of economic history along other lines. Of what consequence is Marx's development unless he was a leader in the evolution of thought and not merely the interpreter of English economics to the German nation? Assume also that Germany is not ahead of us in development and her 3,000,000 socialists afford no indication that our progress will bring a like development. Are we the pacemakers in economic evolution or is Germany? When this is decided the dependence or independence of American thought settles itself.

Aside from a German education the potent influence in shaping my career has been the writings of John Stuart Mill. I have regarded myself as his disciple; and while other heroes of my youthful ardor sank beneath the horizon he remained the one personal influence shaping my thought. In my "Development of English Thought," I looked on him as the high-water mark of Nineteenth Century thinking, and believed that this interesting epoch ended with him. Were I to write the chapter on the "Nineteenth Century" again I should make of him not a goal but a half-way house between the dogmatic rationalism of the earlier epoch and the rising wave of sentiment and class hatred in the new. Mill goes from logic to sentiment without being conscious of the opposition between them or of the change going on within himself. He is a thinker becoming a socialist without seeing what the change really meant. The Nineteenth Century epoch ends not with the theories of Mill but with the more logical systems of Karl Marx and Henry George.

The new epoch in American thought begins with the contrast

of rationalism with pragmatism. To apply pragmatism to economic thought means to test historical epochs by the results that flow from them. Instead of anticipating changes and deducing social consequences from them, epochs are to be studied subsequent to their completion. The Nineteenth Century should be judged by the facts of 1912, not by the anticipations of those who took part in its progress. It is not what Mill, Carlyle, Spencer or Marx thought would take place but what has actually happened that should interest us. This means a change from prophecy and deductive laws to facts and statistics. If we can determine the truth of deduced anticipations by present knowledge, a new epoch is opened up and fresh studies in economics are needed to point the way of progress.

In this viewpoint I may be right or I may be wrong. It is the final reason why I return to economic theory and seek to restate its premises and doctrines. Others must judge of its success but to me it has been a pleasant task to reopen seemingly settled controversies and to review them in the light of present facts.

I. THE DEVELOPMENT OF AMERICAN THOUGHT

The difficulty in measuring the development of economics in America is due to a lack of appreciation of the changes that have taken place in the last three decades. From one point of view it seems as if American economists have made no advance. There is no topic not open to disagreement. On the other hand, there never have been thirty years in the history of economics when so many fundamental changes have been wrought. Economists disagree, and rightly, about matters not yet settled, but in these disputes they overlook the changes that are generally admitted. This makes it possible to review the history of American thought and to separate the changes already made from the disputed points that are still unsettled.

The beginning of the epoch dates from the formation of the American Economic Association. Its founders had little idea of the development through which economics was to pass. American economics has done everything but what was then expected of it. It was supposed that this new group of thinkers would be historical, but no historical work has been done. The unexpected was the rise of the school of deductive theorists—the very thing the formation of the American Economic Association was designed to prevent. I will not, I hope, be regarded as egotistic if I put myself with Professors Clark and Giddings as an influence in bringing about this change. As one who participated in the movement, I wish to review its history with the idea of pointing out its successes and its failures.

At the beginning of the decade it seemed as if these writers had a common ground, and that from their viewpoint a new school of economics would arise. But fundamental divergencies soon appeared which gave three types of thinking rather than one school. I shall describe these, not in the terms of the discussion at that time familiar, but in a terminology that has developed since that time. Professor James has made two words common property in America—one is "pragmatic" and the other, "pluralism." He pointed out, however, that these are not new kinds of thought, but new names for old ways of thinking. Writers have always been rational or pragmatic on the one hand, and monistic or pluralistic on the other. But their differences were not clearly defined until he made the public familiar

with these terms. On the basis of these contrasts it seems plain that Professor Clark is an economic monist, while I am an economic pluralist. Professor Clark has endeavored to clarify the economic thought, to state its principles more cogently and to give the general laws of the science a new setting. This, as I understand it, is economic monism. On the other hand, I have started from some fundamental contrast and tried to deduce from each term principles that seem to oppose each other. In my way of thinking static and dynamic are equally fundamental and neither can be derived from the other. In economic discussion we must, therefore, distinguish clearly between dynamic and static principles, and expect that the laws deduced from the one will oppose those derived from the other.

A practical illustration of this dualism is the discussion of protection and free trade, neither of which, in my opinion, can claim ultimate superiority. But in the conditions that arise from age to age, the one or the other policy may be the more effective. So, too, in the contrast between a pleasure economy and a pain economy, neither can be derived from the other, but in particular epochs of the world's history, the one or the other has been dominant. In the same way, the laws of consumption are laws of human nature, and consequently must be derived from the feelings and appetites of men, while the laws of production are those of the physical world in which we live. Consumption, therefore, cannot be subordinated to production, nor production to consumption without disregarding facts to which economists should give attention. Or, to put this dualism in more general form, part of economic science is based on physical nature; from it come laws of universal application which cannot be overthrown by the action of man. On the other hand, many economic laws are expressions of human nature. These are not only capable of modification, but are continually being altered. The one element, therefore, of economics is enduring, the other is temporary. By this I do not mean that human nature is easily altered, but that the features we regard as human are subject to evolutionary modification.

In contrast to the attitude of Professor Clark and myself, both of whom accept economic phenomena as fundamental, Professor Giddings views are sociological. The difference between economics and sociology is that the economist regards as fundamental the primary phenomena of his own science, while the sociologist regards economic phenomena as a consequence of more fundamental laws.

In summing up this discussion, I should say that the differences between Professor Giddings and myself are still unsettled, while the difference between economic monism and economic pluralism has been settled in favor of pluralism. If economic monism is to succeed, somebody must show how the principles of dynamic economics can be derived from the principles of static economics. I do not believe that Professor Clark would claim that he has done this. I think, moreover, that the failure of Professor Clark as well as that of Professor Marshall is a good indication that it cannot be done. Professor Marshall, like Professor Clark, promised a second book that would deal with these broader problems, but the promise has not been fulfilled. The Austrian economists, likewise, have hoped to derive from the principles of utility a general scheme of economics, but no such scheme has been developed. It appears, therefore, that the endeavors to create an economic monism in our age have failed as completely as Ricardo and Mill failed to create an economic monism in their age. The best minds of England and America have faced this problem, and have been compelled to give it up. I, therefore, regard it as settled that there is to be no revival of economic monism in our age. This does not mean, however, that monism as a scheme has disappeared. It is coming forward more prominently than ever before, but it is now sociology, not economics.

A second change of this epoch (1890-1900) is the rise of an economic interpretation of history. As the economic interpretation of history is associated with socialism rather than with economics, it is necessary to speak more fully of the real origin of this type of thinking. The first person to use the phrase "economic interpretation of history" was Professor Rogers. He used this as a means of getting at the laws which could not be determined from universal principles. The wages problem, instead of being discussed deductively from the principles of nature, is to be studied through the concrete facts of certain epochs in which the wage problem is prominent. He, therefore, regarded the study of four centuries of English history as giving the clue to a real discussion of the wages. As a follower of Professor Rogers in this field, I extended the thought so as to make the economic interpretation of history the means of getting at the dynamic laws of social change. The difference between dynamic laws and static laws is that static laws can be determined under any group of social conditions. They are always present and can always be

found. But dynamic laws cannot be determined in this way. The dynamic elements become prominent one after another, and the changes they bring must be studied in the epoch in which they are dominant. If one wishes to study changes in consumption, he must study the epochs where alterations in consumption are prominent. Dynamic changes are also brought about by invention. He must, therefore, look to the particular ages where invention has been prominent to discover what its effects are. The economic interpretation of history, then, is the study of the prominent changes which take place in each epoch, and from a series of such studies one can create a general interpretation of genetic growth. This way of thinking marks a change in the method of economic study quite as important as the pluralism that has come from the contrast between static and dynamic economics. It is a matter of slight importance to know the originator of this method of study. It is of prime importance, however, to know the changes in American thought that have been wrought by it.

The epoch since 1900 has been important for another reason. The characteristic change has been the increasing influence of socialism. In 1900 it could be said that socialism occupied so minor a place that it could be overlooked. The literature of the epoch will, I am sure, bear out this statement. In 1912, however, it would be nearer right to say that all thinkers are socialistic. Either as a matter of principle, or by some type of dualism, they admit it as an element in their thought or as a mode of expressing their feelings. The important book in bringing about this change is Professor Seligman's "Economic Interpretation of History." Without exaggeration it can be said that this book is the Bible of American socialism. Instead of going to the writings of Marx, socialists refer to it as an authority on fundamental topics. This of itself would be a matter of importance but its real influence lies in the fact that it enabled a large group of American thinkers to accept socialism and to express their ideas in its terms. Karl Marx found the English field occupied by what were termed sentimental socialists. His great work was the transformation of socialism from a sentimental to a scientific basis. This change had a marked influence on the Continent of Europe, but the sentimental socialists remained in England and America practically as they were. The keynote to their sentimental attitude is a repugnance towards anything materialistic. Consequently

so long as socialism was put in materialistic terms, they would not accept it. When, however, Professor Seligman stripped Marxian doctrines of their materialistic interpretation, and gave them a sentimental setting, this group were readily converted into modern socialists.

American socialists are not scientific socialists of the type Marx sought to create. Every leading socialistic writer is clearly idealistic in his attitude, and would repudiate socialism if it were put in a materialistic shape. Sentimental socialism to-day is a new form of expressing idealistic concepts. That writers with literary traditions should accept an economic interpretation of history is a victory. From now on, they are not enemies but friends. Whatever may be the ultimate decision as to particular doctrines, economic evidence will for both groups be fundamental.

II. THE PROBLEM

It is plain that American thought has made considerable advance and has attained some degree of originality. From this it does not follow that all theoretical problems have been settled. On the contrary, it is evident that fundamental concepts are still open to discussion, and that the movement in American thought has not yet terminated. Two victories, however, seem to have been won. In the first place, American thought has been made independent of European thought. We are no longer under the tutelage either of England or Germany. The second victory is that economic pluralism has won as against economic monism. By this I do not mean that pluralism has gained a victory over monism. That would be claiming too much. But economic monists must become sociologists, and as such they will be unable to carry on the struggle within the economic field that they have in the past been able to do. As a consequence of this change has come an advance in the economic interpretation of history. The discussion of the past in the light of the present is on a par with a discussion of the present in the light of the past. Without meaning to prejudice the conclusions from these contrasted viewpoints, it seems clear that a sociological interpretation has displaced the old historical interpretation. As a whole, this sociological interpretation is based on a material interpretation. If any one asserts that the sciences have an order of development, and that the physical sciences are fundamental, no escape is possible from the conclusion that the premises of these sciences are also the premises of social science. This means a material interpretation of social development. There is another way of putting this contrast that bases it on the difference between pluralism and monism. If the sociological view-point is correct, the primitive history of man is fundamental to an interpretation of the present social life, and discussions of social affairs must begin with a study of the origins of man. If, however, there are two economies, a pain economy, based on struggle, and a pleasure economy, in which harmony prevails, neither the history of man in this pain economy nor the struggles then important are fundamental to present discussions. The approach to the social life of man must be through his present economic activities.

This gives us one way of stating the problem now confronting American thought. The standpoint of cosmology gives another way of stating it. In the past, two cosmologies have stood opposed to one another. One has been a theological cosmology at the basis of religious thought, and the other, the material cosmology, popular with students of physical science. Both of these cosmologies are monistic, one having at its basis the thought of a spiritual origin of the universe while the other emphasizes a material origin. The economists have not taken sides in the contest between the theological and material cosmologies. Every economist has admitted physical premises. No economist has denied what in terms of religion are called theological premises. It should be remembered that the early economists were theologians, and that the basis on their thought was known as natural theology. Since then there has been a shifting in the position of economists, sometimes towards a more material, and sometimes towards a more spiritual standpoint, but economic cosmology has usually been pluralistic, and thus has accepted premises that must be regarded as antagonistic. There are many ways of expressing the essentials of an economic cosmology, no one of which is fundamental, nor generally accepted. I shall, therefore, put in two columns some familiar contrasts with the idea of bringing out the fundamental opposition that exists between them. In the first column will be found those terms that imply a spiritual or genetic attitude, while in the other are placed those which are material or structural in their implications.

I	II
Genetic	Structural
Sentiment	Logic
Dynamic	Static
Passion	Intellect
Invention	Habit
Observation	Deduction
Intuitive	Statistical
Religion	Science

If the logical or monistic expression of thought is correct, all of the ideas in column I are derived from those in column II. If, on the contrary, they cannot be derived from the ideas in column II,

the two groups must be put in a fundamental contrast with one another and as a result an economic pluralism is created. This gives our problem stated in its second form.

If economic pluralism be correct, sentiment must be treated as a fundamental fact, and not as a social derivative. Both democracy and socialism are emotions arising from economic relations which must be accepted as fundamental in any economic interpretation. Democracy is an emotional reaction against the privileges of the strong, and socialism is an emotional reaction against the exploitation of the weak. If one has no emotional reaction against privilege, he lacks an element that modern civilization should have given him. If, likewise, the exploitation of the weak has no concern for him, he must be looked upon not as a superman, but as subnormal. A man may be democratic, that is, have strong emotional reactions against privilege, and at the same time have no emotional reactions against exploitation. The opposite defect of having an emotional reaction against exploitation without a corresponding reaction against privilege is not so common, yet it is real. Both attitudes should be regarded as evidence of incomplete social development.

If a change is made from sentiment to policy, a corresponding contrast presents itself. When men emotionally react against privilege, the economic basis of this reaction is the unequal distribution of profits. The social democrat, therefore, seeks to equalize profits, and opposes any centralization giving one man a greater share than another. The socialistic program demands not merely an equalization of profits but also an equalization of income. This program makes more fundamental changes than would be demanded by a democratic program. To put the contrast in another way, the equalization of profits does not demand any change in the capitalistic system nor in the prevailing system of private property. Both these institutions could be kept in their present form if the emotions of society are aroused against the centralization of profits rather than against the inequality of income. The essence of capitalistic industry is profit. Every industrial change that raises profits strengthens capitalism. It grows in power as the rate of profit rises, and would fall if the rate of profit were taken away.

Such are the facts which create the present problems of American thought. Do invention and economy create wealth or is it the result of toil and sacrifice? This is the problem of production.

Are wages and interest determined by concurrent events or by pre-established laws? This is the problem of distribution. Does social law arise from cooperative assent or is it the coercive result of state action? This is the problem of social control. Is the basis of thought pragmatic and hence economic, or is it dogmatic and thus sociological? This is the problem of method. Are cooperation and compromise stronger motives than discord and struggle? This is the problem of progress. All these are in reality one problem the solution of which demands a unified treatment. In the past economists have striven to build a purely rational system that would be a monistic expression of progress. Their failures have created the present situation and awakened a demand for the reconstruction of economic theory. Economic thought should be based on industrial changes already made and on social reorganizations plainly manifest. It will thus become pragmatic and incorporate in itself all the elements making for the improvement of mankind.

III. THE ORIGIN OF SOCIALISM

The American public has recently been aroused by the development of a group of socialists with a philosophy that would revolutionize American life. The cause of this does not lie in the arguments presented so much as in the thought that socialism has a unity which puts it in direct contrast to conventional views. It seems as though we were facing a revolution, and that public opinion must be radically modified so as to eliminate capitalism. Those who present this view emphasize three things: the unity of socialism, the logic of socialism, and the hero of socialism. If socialism is a unit; if it has a hero and a logic, a revolution seems inevitable. This viewpoint was first brought to the attention of the American public by Professor Seligman's "Economic Interpretation of History." Later writers have been even more eulogistic; in its present form the Marxian tradition can be found in an article by Professor Small on "Socialism in the Light of Social Science."¹ The difference in the two viewpoints consists in the fact that Professor Seligman emphasizes the importance of the economic interpretation of history. Professor Small not only accepts the position taken by Professor Seligman, but lauding Marx as the Galileo of social science, enunciates the economic doctrines of which Marx was the originator.

To appreciate this issue the double origin of American economics must be made evident. One basis lies in the Ricardian economics best expressed by Mill in his political economy; the other, in the German historical school in which the present generation of American economists has been educated. If Mill is wrong in his history and the German historical economists in their statements of facts, there are errors in the reasoning of American economists hidden under the prestige of these two groups of thinkers. In the first place, did Mill misrepresent English economic thought? Secondly, did the national prejudices of the German economists prevent them from recognizing doctrines as English that were really so, and in this way misled the American economists who have been educated under their influence?

Why did Mill neglect the real creators of English economics?

¹*American Journal of Sociology*, May, 1912.

In the first place, English writers expressed their ideas in theological terms, while Mill was opposed to natural theology. In the second place, the traditions of the group to which Mill belonged were opposed to sentiment as a force in social life. They tried to bring everything to a logical basis, and in so doing overlooked the power of the emotions to shape the lives of men and the history of nations. The work of any thinker who emphasized sentiment was disregarded. This shut out those economists who felt a natural resentment against the industrial system then in vogue.

These are some of the reasons why Mill did not give credit to his opponents. Why did he emphasize Ricardo? Because Ricardo gave special attention to the importance of profits in English industry. He also emphasized the evils of over-population, and sought to establish a definite relation between wages and the cost of living. These doctrines favored by Mill were opposed by many economists in his time. He was forced, therefore, to make Ricardo represent not only his own doctrines but many others advocated by opposing economists that could not be credited to them without weakening Mill's position. Mill, more than any one else, was the originator of what is called economic orthodoxy. He would not recognize English writers who took opposing views. When he wished to make use of the doctrines they held he went to the French writers for them. A sample of this is his treatment of socialism. He had been reading foreign books on socialistic literature, and these he utilized in his statement of socialistic doctrine.

The German historical economists are an important element in the new situation because their views have had so great an influence in shaping American economic thought. English political and economic theory had been introduced into Germany during the first part of the nineteenth century, but it was opposed by the rising national sentiment which sought to free Germany from foreign domination. This sentiment is the basis on which recent German progress has taken place and with it no one can find fault. But the general antagonism which it generated towards England resulted in the displacement of English ideas both political and economic. The German historical school went to the side of Bismarck and opposed the social movements having an English origin. This opposition to English ideas, reflected both in history and economics, is one of the striking facts with which Americans studying in Germany came in contact.

The result has been that modern economic theory has finally worked its way into Germany as socialism. Marx Germanized English economics. This is his virtue and service. Every proposition that he advances, both true and false, had been fully stated in England. But for the prejudices of the German economists, these ideas would have become commonplaces in Germany,² and thus would have prevented Marx from gaining position by utilizing them. Of this the doctrine of surplus value is an example.

In seeking the origin of economic ideas, it is erroneous to follow the history of words rather than of ideas. Telling expressions are invented not at the start but only after a long period of obscure development. If the question is asked, who first used the term "surplus value," the answer is that while the term had been used by economists before Marx's time, it is also true that they made little use of it. The real question is, did Marx when he translated into German the term "surplus value" have in mind the older idea of profits? If under the head of profits the origin of surplus value is sought, we find it to be one of the oldest concepts of English thought. Who originated the idea that there was a surplus value in industry, or, in other words, who found that after accounting for all of the expenses of production, there was still a profit left over? The reply to this must be that when commercial bookkeeping came into general use, the fact became known that after accounting for every expense, a large surplus remained. To illustrate this, I will give three examples of bank statements taken from a current financial journal:

I

Liabilities

Capital.....	\$47,000,000
Surplus.....	26,000,000
Dividends for the last ten years... 11, 11, 12, 12, 12, 12, 12, 12½, 12½, 12½ per cent	

² "There is no socialistic doctrine of essential significance, no socialistic theory of general industry, of historical development, of the state, of law, which had not already been spoken out at the middle of the nineteenth century, and had not been applied in criticism of the existing society and industrial order; yet German national economic science did not regard it as necessary to reach an understanding with these doctrines. . . . German national economy passed by the signs of the times without attention. The noise of the street, the strokes of the scourge of the agitating publicists, the historical and philosophical observations of the critics of society affected it as little as they would the astronomers who trace out in the orbits of the stars the eternal laws of nature." Quoted from "The Infusion of Socio-Political Ideas into the Literature of German Economics," by Eugen von Philippovich, in the *American Journal of Sociology*, September, 1912, pp. 147, 149.

II

Liabilities

Capital stock paid in.....	\$10,000,000
Surplus fund.....	15,000,000
Undivided profits.....	6,500,000

III

Liabilities

Capital stock paid in.....	\$3,000,000
Surplus fund.....	12,500,000
Undivided profits.....	800,000

In the first instance, the capital is \$47,000,000 and the accumulated surplus is \$26,000,000. This surplus is not interest because the same advertisement tells us that the rate of interest for the last ten years has been from 11 to 12½ per cent. It is, therefore, a natural question to ask, to whom does the \$26,000,000 of surplus belong? The second statement shows a surplus much greater than the paid-up capital. Can we wonder that people should ask the question, why is this \$15,000,000 withheld when thousands of people are working for five dollars a week? In the third statement the accumulated surplus is more than four times the paid-up capital. These are not exceptional statements nor are they new. English banks have given such statements for two hundred years. English financial development also gives the basis for the doctrine that industrial capital is accumulated or undistributed profits. The orthodox economists claim that capital is the result of saving. This doctrine however, has never been popular with English and American promoters. Every financial heresy has been based on the thought that industry can be started by other means than saving. Issue, say, \$100,000 of paper money and use it to start an industrial establishment. Enlarge the plant from the accumulated profits and live off the proceeds. Capital can thus be created without work; profits can accumulate so as to make not only individuals but the whole nation wealthy. All this may be false, but it is not new. In its origin, it preceded socialism by a hundred years. Instead of being the claim of obscure thinkers, there is scarcely a town in this country that has not tried to increase its wealth by this means. It is the most popular fallacy that economists have had to oppose.

How do these theories become socialism? The reply is that English sentiment has always been opposed to the exploitation of the

poor. After the facts of industrial development became known, it was not possible to keep people from asking, what right have employers to profits? For this reason a popular agitation began having as its basis the thought that this fund should go to the laboring population in whole or in part. In this way English opinion became steadily socialistic in sentiment. There were more complaints about the evils that industrial life brought, and less about the evils connected with nature. The theological viewpoint was replaced by the economic, and reformers were compelled to find some new origin for the evils about them. Is it any wonder that they viewed the industrial system as the source and cause of social injustice? Their sentiments, however, led them to favor two doctrines out of harmony with each other. One was that labor is the source of wealth; the other, that surplus profits should go to the laborers in whole or in part. If the socialists accepted economic optimism and admitted that labor was not the source of wealth, they would have no basis for their sentiment. If labor does not produce wealth, then why feel a strong interest in the oppressed laborer? On the other hand, if there is no surplus, as the pessimists claim, there is no basis for sentiment. The doctrine that capital is produced by labor and that capital is undivided profits cannot be brought into logical harmony. The result is an inherent contradiction that the early English socialists could not overcome, and hence they failed to impress themselves on national thought.

The successful thinkers and actors of the following epoch were men who appealed to class consciousness and to local sentiment, and thus by gaining for themselves a definite constituency, have been lauded as thinkers far above their real merit. Cobden's influence is not due to his appeal to universal principles but to the fact that his ideas favored the commercial classes of England. He thus paved the way for economic orthodoxy. Carlyle's appeal is not to commercial England but to aristocratic England. Bismarck appealed to race hatred as plainly as Marx appealed to class hatred. Carey was also a good fighter, who denounced English industrial development as vividly as did Marx. The difference between the two lies in the fact that Carey was optimistic, where Marx was pessimistic. The economic harmonies of Carey have as clear an economic basis as the pessimistic dogmas of Marx. If one is an economic interpretation of history, the other is also.

All these views are a part of one general change. Modern industry had disturbed the relations existing between European races and industrial classes. A struggle for a new adjustment was inevitable and has been going on for sixty years with unabated vigor, for in such an epoch the mild optimists of the earlier epoch were out of place. We are so used to the new methods that we smile when peace, harmony and cooperation are spoken of. The childlike faith of the following passage seems unreal. Yet it was once the belief of a group with broad interests and high hopes. It shows the gulf between them and Marx better than a volume of words.

"But let no one imagine that so desirable a condition can be attained, except by a complete revolution in the principles and practices of society; to be effected, however, in peace and order, and with the entire concurrence of all parties concerned; for violence is utterly opposed to the spirit of the new system, by which, in future, it is proposed to carry on the affairs of life.

"The Social Reformer,—strong in his conviction of the everlasting, saving truth, that the character of man, in all countries and climes, and under all conditions, is, at every period of his life, the result of his original organization, and of the influence of external circumstances (mostly from under his control), acting upon that organization,—has the most unbounded charity for the convictions, feelings, and (necessary) conduct of all men; and his constant and unceasing endeavor therefore is, peacefully to withdraw all those circumstances which are known to produce evil, and to replace them by those only which are known to produce good to the human race. He discards all force and delusion, for these will not serve his holy cause. Clothed in the panoply of truth, he goes forth to do battle with error, relying on the powers of moral suasion and kindness alone, as the only agents capable of effecting a revolution so glorious and so God-like."³

³ *Distribution of Wealth*, William Thompson, pp. xii-xiii.

IV. THE ECONOMIC MARX

The preceding chapter pictures the state of economic thought when Marx arrived in England. We thus get the background from which Marx developed and a method by which his contributions can be separated from the tendencies of the age and from the achievements of his contemporaries. Marx is a German reared in the atmosphere of political revolution, and then immersed in an English environment where the struggle of classes had displaced the older race struggles still dominant on the Continent. It is interesting to see how quickly Marx seized on the salient points of the new situation and converted a philosophy designed to settle English industrial problems into a mechanism to promote a revolution in Germany. In this change two initial steps were needed. The basis of English thought in national theology must be replaced by the material view then prevalent in Germany. Sentiment and theology were to be excluded and a social philosophy developed that would stand the test of modern criticism. This is what Marx means by scientific socialism. The second change was in the opposite direction. The early socialists had made their appeal solely to reason. They expected to convince employers that better conditions and higher wages were industrially advantageous and thus make a transition to socialism with the assent of all industrial groups. This harmony of interests Marx replaced by the theory of class struggle. Revolution was to do what the slow working of economic law had failed to accomplish.

In the first of these doctrines there is little unique in Marx's position. Materialistic thought had already made great headway and was promoted by several strong thinkers. The second also was in harmony with the trend of events. The industrial revolution had made so many alterations in the position of races and classes that a new equilibrium could be reached if at all only after a painful struggle. It was useless to ask a race in a new position of economic advantage to forego its benefits and equally futile to expect an old established class to accept tamely the loss of political power and of social position. A new control in the political and economic world had to be established by a struggle that was to last for fifty years.

Marx saw the nature of the coming conflict more plainly than his contemporaries and by his emphasis of class struggle did much to change the center of thought from the political struggles of the past to the economic struggles of the present. What nation should survive was an old problem. What class had the power of survival was a new way of stating the opposition of interests which all felt but no one before Marx had fully expressed.

It is difficult to follow Marx's development because his early statements are meager and the later ones are more tradition than fact. His earlier thought, as I interpret it, was sociological in character while his later thought was economic and revolutionary. This means that he first put an emphasis on a material interpretation of history and hoped to show that the laborers were the surviving class into whose hands society was to come. Such a transition of thought would be easy to make and that he did make it is borne out by many contemporary facts. This position, however, became untenable through the rise of the theory of evolution. Darwinism does not prove that the world belongs to rabbits. It proves that rabbits belong to foxes. Such an evolution could not take industry out of the hands of the capitalists; it would put the laborers more completely at their mercy. Had Marx not seen this he would have spent his time on some book emphasizing the material concept of history and thus would have ended not as an economist but as a rival to Buckle.

Events, however, went too rapidly for so slow a movement of thought. Revolution was in the air. It never seemed so strong nor so widespread as in 1848. Every one feared another French Revolution and believed a clash was at hand that would settle whether conservative or radical was to control the destinies of England. If the political control of a long-established aristocracy could be wrested from them, why could not the economic control of the capitalists be likewise overthrown? To create the basis for this change demanded a new economics. Sentiment might be a force in an upheaval but it could not bring on an industrial reorganization helpful to the workers.

That Marx had such a thought is shown by his long continued attempt to reconstruct economic theory in harmony with revolutionary concepts. His "Capital" is a monumental endeavor to reduce to harmony a group of conflicting doctrines that did not thrive in

English atmosphere. The theory of progress through capitalistic control had gained an ascendancy and a unity hard to break. Revolutionary economics must seek its basis in some other quarter. To this new position three doctrines are necessary: that there is an undistributed surplus; that this belongs to the laborers, and that in some way capitalism will break down, thus enabling the laborers to come to their own. The antinomy of socialism lies in the opposition of the first two propositions. If there is a large undistributed surplus, its origin has some other source than labor. If wealth is not the result of toil, the workers have no superior claim to it. Sympathy for the laborers can arise only when toil is the source of the produce annually distributed by the economic process. Deny the existence of a surplus and there is nothing to contend for. Make it emphatic and the weakness of the workers in an economic struggle becomes apparent.

Such is the problem of Marx as I see it. His admirers would put it in another way. They fail to distinguish between what Marx did and what had been done for him by the earlier progress of economic thought. Professor Seligman bases his claim of Marx's originality solely on his presentation of an economic interpretation of history. Professor Small is more enthusiastic. He calls Marx the Galileo of social science. This estimate is interesting because ten years ago Dr. Small would doubtless have named Auguste Comte as the hero of social science. Sociology has undergone a transformation during the last decade by which it has ceased to be a history of civilization of the type Comte originated and has now become a theory of race and class struggle. "No one," Dr. Small tells us, "gets through a primer of social science to-day without learning that class conflict is to the social process what friction is to mechanics." This brings sociology and socialism into harmony and creates a common basis and a common faith. It is one thing, however, to assert the importance of Marx to sociology, and another to attribute to him a like originality in economics. If Dr. Small connected the history of the theory of profits with that of surplus value, he would not have called the earlier economic statements of surplus value "rudimentary." If he had taken Mill's Political Economy into account, he would not have found Marx original in asserting that laborers and capitalists are "sharply distinguished and precisely divided classes." Every theory of distribution from Adam Smith's

time had stated this assumed differentiation based on the presence of three industrial classes in England.

The originality of Marx may be brought to the test in another way. Dr. Small asserts that socialism is ninety per cent Karl Marx and ten per cent his followers, thus leaving no place for his predecessors. Then Dr. Small goes on to say, speaking for the present age: "We assert the universal fact of class conflict as strongly as he did. We assert the universal fact of cooperation more strongly than he did." This implies that class conflict is the older doctrine and that the belief in cooperation has its origin in later times. But why not give credit to the earlier socialists who did so much to promote cooperation? Do we assert the universal fact of cooperation more strongly than Robert Owen did? If Dr. Small had stated the real order of the progress of thought as from cooperation to class struggle, and not from class struggle to cooperation, it would have been apparent that the Galileo claim was not tenable. From struggle to cooperation is progress; from cooperation to struggle is a backward movement. To see through a glass dimly may be a virtue but to shut one's eyes to the light is a crime. Did Marx have before him the benefits of cooperation and consciously ignore them? Is the man who under these conditions resorts to conflict a hero or a demagogue? As we decide these questions we settle the claims of Marx to priority and to immortality.

A more valid statement of Marx's claims may be found in Cross's "Essentials of Socialism." He bases scientific socialism on nine doctrines: (a) The evolution of society; (b) the economic interpretation of history and the doctrine of class struggle; (c) the Marxian labor theory of value; (d) the Marxian theory of surplus value; (e) the socialistic explanation of crises; (f) the right of labor to its full product; (g) the theory of the increasing concentration of industry; (h) the theory of increasing misery; and (i) the catastrophe theory. From these we get a glimpse of the real problems with which Marx dealt in his book on "Capital." These doctrines are not mere commonplaces. They are matters of long standing dispute and are still open to discussion.

The real difficulty of founding a revolutionary economics to displace the harmonies so much amplified by early economists is made even clearer by an additional list of discarded economic doc-

trines. They show the difficult position in which Marx found himself when he sought to revolutionize economic thought.

- The doctrine of overproduction.
- The transformation of money into capital.
- Labor checks in the place of money.
- Labor as the source of wealth.
- The elimination of small producers.
- The growth of landed estates.
- The fall of wages.
- The failure of cooperation.
- The crushing of trade unions.
- The increasing severity of industrial crises.)
- The increase of unemployment.
- The rapid growth of population.
- The relative increase in numbers of the proletariat.
- The abolition of interest.
- The passing of competition.
- The right to work.

I have not stated these propositions to discuss or to refute. They show the task that Marx undertook when he attempted to reconstruct economic theory. Can they be blended into a coherent scheme or are they a series of contradictory propositions that no thinker can harmonize? They readily fall into two groups. The one turns on the theory of class conflict and its force in creating social progress. Such propositions are sociological in character and since Marx's time have been incorporated in the science of sociology. I shall not discuss them because they lie in a disputed realm where differences of opinion are allowable. Sociology and economics have yet to wrestle for the supremacy and in the meantime Marx should have what credit comes from the fact that he anticipated the trend of events that gives sociology its present place. But this does not give him standing as an economist. To show that progress comes through race and class struggle is one thing; it is quite another to show that wealth grows through the exploitation of labor, or that its source is to be found in the toil of the proletariat. Has he proved that money can be transformed into capital, or that competition is decreasing? Have the trade unions been crushed and is voluntary coopera-

tion a failure? Have landed estates grown in size and have wages fallen? It is with these problems that Marx wrestles in his "Capital" and he failed to solve them just as other would-be economists before and since his time have failed.

These propositions are not new to the American public. They have been up for discussion in a dozen presidential campaigns and they will doubtless reappear until a sound public opinion replaces the confusion now prevalent. The difference between Marx and the American radical does not lie in the positions taken but in the remedies to be applied. All of the elements of the catastrophe doctrine have been frequently amplified in the discussions of paper money and in the literature of protectionism. The catastrophe of hard times can be remedied by a free use of paper money, said the one group, while the other said that protection was the cure of low wages. Marx has another remedy but no new arguments, nor did he discover any new defects in capitalism not found by his predecessors. From the arguments used in a campaign for state socialism, a returning ancestor might imagine that the dispute was about paper money. Put "capital" in the place of the "money power" and the fervent orations of to-day would have been understood forty years ago. Our ancestors would be familiar with all of them; they would be puzzled only about our remedy.

Had Marx succeeded as an economist, the position of the contending groups would be radically altered. As it is, every doctrine claiming that progress comes by slow evolution has gained ground. Many theorems can now be proved that were mere matters of conjecture and prophecy in 1848. The change from the meager data of that age to present attested facts shows that Marx was a bad theorist and a worse prophet. Socialism is either sociology or economics. As thinkers, socialists must get into the one group or the other and as they choose they must accept the premises, the logic and the conclusions of the group they join. The compromise between sentiment and thought is in the future, and the credit for the new harmony belongs to some still unborn thinker. As there is no definite socialistic thought apart from its sociological postulates so there is no socialistic program. Each new wave of socialistic sentiment sets up some new goal or suggests some new compromise with capitalism. There are as many of these as there are fluctuations in the industrial situation that produces them. As an arouser of emotion,

socialism is a success, but in the formulation of thought, it is failing exactly as Marx failed. In the meantime capitalistic production has increased the stability of industry and reduced the suffering coming from famine, contagious disease and the lack of employment. It has shown the power of voluntary social organization and has justified the hopes of Adam Smith and Robert Owen that cooperation could gain a victory over national, local or class interests.

V. TYPES OF AMERICAN SOCIALISM

During the last century socialism presented itself in two radically different forms. One of these, represented by the early English writers, is called sentimental socialism because of its opposition to misery, or voluntary socialism because it appealed to voluntary organizations rather than to the coercive power of the state. In contrast to this is the Marxian socialism appealing not to the co-operative spirit, but to fear, coercion, class and race hatred. Revolutionary ideas were never so widespread nor seemingly so dangerous as when Marx began his agitation in favor of the toilers. Since 1848 evolution has replaced revolution and thus caused a radical alteration of social methods and programs. We have now had sixty years of this newer development and we should base our judgments of it on current facts, not on antiquated history. We can thus measure the successes and failures of the several types of socialism now influencing American opinion.

In its early history, state socialism represented the demands for the nationalization of industry on the one hand, and an equality of wages on the other. Neither of these ends has been attained, nor are we any nearer their attainment than we were sixty years ago. State ownership now means not the abolition of capitalism but the equalization of profits. State railways mean small profits on transportation and larger profits to the transporters. An increase of profits has gone along with this movement and in no way has the development of capitalism been interfered with. There is, however, another form of socialism not yet harmonized with capitalism. I will call this movement street socialism because it represents the attitude of the toilers who feel their interests opposed by present tendencies. It is the emotional reaction of the oppressed classes, and is bound to take more vivid and forceful forms until it either succeeds or fails. I do not venture to predict the outcome, but it is apparent that the group is divided into two antagonistic classes, one demanding state action, and the other, direct action. Between the two are irreconcilable differences which are bound to express themselves in the conflicts of the future. But even if the two groups remain united, they can represent but a minority of the American people. From them, there is no danger of social revolu-

tion. They must either disappear in a hopeless struggle or be transformed and incorporated into society.

Socialism is, therefore, not an anticipated evil but an intense form of social activity. During the last sixty years the individual has been lost; the group is now everything. While there has been an effective demand for the equalization of profits, there has been no strong movement for the equalization of income. The changes, therefore, mean that the small capitalist has gained an advantage over the large capitalist on the one hand, and the laborer on the other. There has, however, been a steady rise in profits and an increasing socialization of capitalism. There has also been a change of emphasis from wages to the improvement of objective social conditions. The non-Marxian attitude has, therefore, won out. Marx may continue a myth and a terror to the uninformed, but the type of thinking he introduced belongs to the past rather than to the present. In spite of the earnest efforts which he and his co-workers have made, a class consciousness has not been aroused. The only nation of which the contrary seems to be true is Germany where the massing of the laborers in one group is due more to political oppression than to economic exploitation.

Voluntary socialism, however, has succeeded to a far greater degree than has the Marxian program. In two important respects, it has failed. One of these is agricultural communism. The second failure is that of profit sharing. Some schemes for profit sharing have been moderately successful; it may be true in the coming age that profit sharing will really become important, but as a whole, it must be regarded as a failure. In other fields, however, success has been marked,—probably more than elsewhere in what can properly be called municipal trading. Neither of the earlier forms of socialism foresaw the future of cities and consequently did not realize the problems that the growth of cities would bring. Municipal trading must be regarded as voluntary socialism because each community elects what forms of cooperative enterprise it will support. It is also plain that municipal socialism is not opposed to capitalism, but is really an extension of it. It is a scheme for the equalization of profits because it results in an extension of the power of the small capitalist.

The earlier socialists thought the field of socialism to lie in schemes for elevating the toilers. Such schemes have failed.

If they had thought of their projects as a means of socializing the capitalists, they would have been the prophets of a new epoch. The striking fact of recent industrial organization has been the socialization of the groups that control them. The system, the interests, the money power, the trusts have bad features, but they represent the socialization of the groups interested in particular fields. The growth of large scale capitalism has resulted in the elimination of the unsocial capitalist and the increasing control of each industry by a socialized group. This group may not represent public interests, but it is a voluntary organization with intense, cooperative spirit. No one to-day can succeed in industry who does not attach himself to some well-defined industrial group. Every city, likewise, has many social groups working for its improvement; even the trades unions succeed as voluntary organizations. College spirit is another manifestation of the same tendency and is becoming one of the social forces of the present. Philanthropy, in its constructive forms, is also voluntary and represents the growth of social sentiment. There is no form of self-improvement, of recreation, or amusement, that does not follow the same general lines and appeal through voluntary means for the organization of the people interested in each field. This socializing tendency has produced great changes and will increase in intensity during the coming epoch. There is no probability, therefore, that voluntary socialism will be displaced, nor is its importance likely to be diminished by any change in state control.

With this marked change in the form of cooperative movements has also gone a reorganization of our social sentiments. To-day, sentiment shows itself either as race and class hatred, or as altruistic enthusiasm. At bottom altruistic sentiment is the feeling of a capitalist expressing itself in sympathy for the laborer. This desire of upper class men to improve the conditions of the lower classes is a radically different phenomenon from the pressure exerted by the lower classes for their own betterment. The lower class movement stands for the control of the state by themselves in their own interests. The upper class movement directs itself against the bad environmental conditions preventing the expression of character. Every lowering of the standard of life, and every increase in the misery due to objective conditions is seen to mar character or to prevent its expression.

This upper class movement has expressed itself in various ways, none of which is adequate to represent its real force. To call such men Utopists is to misrepresent them. To call them sentimental merely emphasizes one part of the movement. Historically they could be called literary socialists because most of their writings have been put in a literary form. Neither of these terms expresses the current movement because they do not call attention to the great change that is taking place in the college world. Better than anything else, this altruistic movement could be called collegiate socialism because universities and colleges are the centers of its propagation. College life is now emotional rather than rational. Fifty years ago college students argued; to-day they shout and sing. A corresponding change has taken place in the teaching. The old economic teacher had a dozen or twenty students in his classes with whom he argued from rational premises. Elementary politics and economics are now taught in large classes. No one can argue with one hundred students. My experience is that forty is the upper limit, and it is difficult when the classes go above twenty. This means that the college professor must appeal to the sentiments and emotions of his hearers. He must orate rather than argue. The emotional appeal also demands that he put before them the sentiments most likely to be active in the minds of his pupils. Three words more than anything else represent the possibilities of arousing enthusiasm,—graft, misery and exploitation. A type of emotional activity is thus developed in college life that is potent in socializing American thought. Its moral program can be summarized as the regeneration of character and its economic program is the abolition of poverty. State socialism has as its political program the square deal and as its economic program, the equalization of profits. These two programs form evolutionary socialism, which is the same as progressive democracy. There is no difference at the present between socialism and democracy. When a progressive democrat maps out a program, it is the same as the program of an evolutionary socialist. The two views are bound to coalesce and from their blending a new political party will arise giving a socialistic trend to American development.

The power of socialism is but partially revealed in this movement. Distinct from and yet blended with it is a socialism revolutionary in character. It may be called sociological socialism because sociological concepts are at its basis. Social thought, we are told,

is impressed by the action of a dominant class. Any change in social control would then result in a revolution of social traditions, laws and morality. If institutions have been imposed by the wealthy for their own advantage, socialism by overthrowing capitalism would bring a new group of social institutions, displacing the now dominant economic morality. This is the sociological argument for revolution. A new motive for a revolution is thus introduced which is not a part of the collegiate socialism already described. Many dislike the restraints of current economic morality and of the social institutions that enforce them. It is thus made to look as if economic restraints were temporary expedients rather than permanent necessities. Of these the most vital is the sex restraint that economic progress has enforced. Each advance in family life has added to the severity of this pressure until sex motives are in open war with the dominant morality. The revolt against sex restraint is widespread and is promoted in indirect ways more effectively than if openly stated. It is especially prominent in magazines, novels and the new drama. As literature becomes social, it takes this form and carries with it a revolutionary attitude that may become dangerous. Sex freedom is too deep a force to yield without a struggle. The issue between sociological and economic premises will probably come here earlier than elsewhere, but come it must and the sooner the better.

VI. AN INTERPRETATION OF JOHN STUART MILL

Before proceeding to an analysis of economic theory, the influence of John Stuart Mill in shaping economic thought must be considered and also it must be seen in what relation he put himself to the two economic schools of his time.

One of these groups was the sentimental economists whom we have already described. The second group is known as the logical or orthodox economists from the fact that they appealed to logical method in developing their theories. In reality, however, they were as sentimental as their opponents. The appeal of the Utopists was to general social interests. Neither nationality, class nor personality obtruded themselves in their discussions. The success of the logical economists was due not to their logic but to the dominance of the capitalists whose sentiments they voiced. The growing influence of the capitalistic class was opposed to the Utopian economists because they demanded improvements in the conditions under which laborers lived and worked. This, if carried out, would mean a fall in profits. On the other hand, the capitalists were interested in free trade, but more than anything else in the capitalistic control of the nation. Anything, therefore, that emphasized the importance of capital to social progress had their ardent support.

But why did Mill become a defender of logical economics when his real sentiments lay with the opposing school? In solving this problem, it is fortunate that Mill wrote a truthful autobiography and also that his books are so accessible that the growth of his ideas can be readily traced. Until 1832 Mill's interest was primarily in political reform. He was one of those who helped to bring about the reform bill of that year. For the next ten years his interest was in logic, not, however, logic of the older type, but inductive logic, and, if we accept his statements, social logic, for the last section of his logic relates to the premises and concepts of social science. If we take this final section of his "Logic" to indicate Mill's anticipation of what was next to be done in social science, it is plain he intended to proceed on an inductive, historical and sociological basis. Why did not Mill carry out this plan so clearly expressed in his "Logic?" Why did he endeavor to make economics a deductive science instead of making it historical and inductive? Something must have happened between 1842 and 1848 to change his attitude,

and to cause him to rehabilitate a method that he had so skilfully overthrown.

To find the cause of this change one must look into the current discussions to see the position in which Mill found himself. He had expected to proceed historically, but he found that his favorite doctrine could not be historically defended. The way to find what use was being made of historical proof at that time is to read the works of Carey. His method consists in taking a mass of heterogeneous illustrations from every clime and age, and aggregating them together to prove pre-conceived doctrines. He has no hesitation in traversing the world from America to India, or history from the present day back to Adam, to pick out illustrations that seem to enforce his doctrine. This is historical sociology in its crudest form, but, at the same time, it was very effective for it served as a basis for the protectionist doctrines then developing. Its influence, therefore, was tremendous. I do not see how free trade or sound money could have been defended on historical grounds. No one of Mill's favorite doctrines could be thus defended. Either he must give up the economics to which his traditions bound him, or he must abandon the method he had outlined and revert to the methods of his father and Bentham from whom his education had come.

A second method of utilizing history is represented by the German economists. They avoid the crudity of Carey's position, but do it at the expense of general principles. German thought is intensely national, and has as its basis the concept of the superiority of the German race. Accepting these two premises, good history is German history. Everything that does not incorporate itself into German thought is bad doctrine. There is a conscious depreciation of other races especially of the English and the Jews. This makes an historical movement of thought which is correct in so far as German thought represents the growth of civilization but is erroneous as soon as progress of civilization ceases to be German. Such an attitude it would have been impossible to introduce into England because the English did not have a like concept of their national continuity and superiority. The best statement of the German viewpoint is to be found in a recent book written by an Englishman, but one who has thoroughly indoctrinated himself with German concepts. This is Chamberlain's "Foundations of the Nineteenth Century." In it is found the race emphasis so telling in German thought, and the

contrast between the German and other national groups. This method of procedure was clearly out of Mill's reach. He was forced to abandon such schemes since they would not appeal to the English public in the way that logical concepts did. Between English historicalism and English logical method, there was really no choice.

There was a third alternative which doubtless Mill saw but was also unable to carry out. This viewpoint is represented to-day by the theories of Marx. It rejects the capitalistic premises but retains the pessimistic part of Mill's philosophy. It is German thought over again except that the doctrine of continuity is the continuity of the laboring class, and not the continuity of the German race. Mill had drawn the contrast between capital and labor but he was unwilling to carry it to a point that would lead to the exclusion of one or the other.

It is plain that all these historical methods were, in some form, in Mill's mind when he decided to abandon historical economics and resort to a logical defense of fundamental truth. The genesis of logical method as understood by Mill and defended by subsequent economists is primarily based on the doctrines of Newton and Bentham. The concept of one fundamental law controlling all social phenomena is derived from the law of gravitation, but the method by which this could be used as the basis of economic thought comes from Bentham. Bentham assumed that men were controlled by two motives, pleasure and pain, and that all of their acts were consequences of these two forces. The transference of this idea into economics comes through a process of substitution by which in the place of pain is put economic cost, and in the place of pleasure, the value of economic goods. Goods are thus made the center of economic discussion. They sell for their costs; they are bought because of their value. From these premises is derived the doctrine that costs equal values. Cost is labor. If the quantity of labor equals the quantity of value, then all values have an economic justification. From this premise comes a better justification of capitalism than any historical deduction could give it. The subsequent use of calculus by Jevons has disproved this conclusion; to-day no one can claim logical support who assumes that costs and values are equal. But in Mill's time no one realized how subsequent argumentation would turn. Their education did not include calculus and their sentiments were capitalistic.

Even if Mill did emphasize logical method, it was impossible for him to make his social system logical. No discussion is clearly carried through to its logical consequences. He starts his argument from logical premises and draws logical conclusions in the first sections of each chapter. He then shifts his viewpoint until in the final sections his social views stand out prominently. An examination of his method makes it plain that his final conclusions are not deductions from his original principles but are due to the insertion of new ideas and a new point of view into a discussion which if logical would have carried Mill to opposite conclusions.

Our present viewpoint is more serviceable than the confused views of Mill's time to show the defects of his method. His choice lay between the crude historical method familiar to the English public and a resort to deduction in harmony with the views of his contemporaries. We have new possibilities because of better statistics. Deductive conclusions now have little weight unless use is made of present facts to verify them. We thus have a check on dogmatic reasoning that was not available to Mill. The recognition of an economic interpretation of history creates the same sort of a check to loose historical deductions that the statistical method gives to deductive thought. We should not blame Mill for not foreseeing these developments of method. The blame is only to those who in an age with better methods neglect to use them.

The logical method, however, has been of importance in two respects. It has emphasized both rent and profits and has, therefore, brought out the difference between earned and unearned income. It has, however, failed in various ways because Mill's thought is based on two antagonistic economies,—the agricultural economy of Adam Smith and the commercial economy of Ricardo's time. In an agricultural economy rent is contrasted with wages. Rent, therefore, becomes an unearned increment; wages include the return for all human efforts. Such a contrast is clear and the conclusions drawn from it are sound so long as the deductions are made in regard to a purely agricultural economy. In the commercial economy, however, rent is lost sight of. The opposition is between profits and wages. In this contrast wages do not include all efforts of industrial society, but only the efforts of the toiling underpaid workers. Within profits are included all of the industrial efforts of the capitalistic class. In the commercial economy one cannot, therefore, say

that wages are the reward of labor. They are the pay of inefficient workers. Sometimes Mill uses labor in one sense, sometimes in another. Sometimes wages are but a class reward. Sometimes they are the pay of all workmen. So long as this confusion remains, no clearly defined theory of distribution can be developed. Mill and his followers slipped back and forth between the two viewpoints and their conclusions are invalid because of the vagueness of their premises. There was no logical attempt to restate the theory of distribution, until Henry George's "Progress and Poverty." There we find the famous formula: $Produce = rent + interest + wages$. If these three terms are carefully defined, there would arise a logical view of the problems of distribution. This later stage of development, however, does not belong to Mill's epoch, but must be considered in a chapter by itself.

VII. THE FAILURE OF THEORIES OF DISTRIBUTION

It is impossible to understand either the theories of distribution now prevalent or the sentiments that lie back of them without giving attention to earlier industrial societies. In primitive times the contrast was between lord and slave or lord and serf. Later it became a contrast between landlord and tenant and then between the leisure class and a working class. If we regard these various contrasts as creating economies, it is proper to speak of a slave economy, a cultural economy, an agricultural economy, a commercial economy and an industrial economy. In all these economies, a two-fold division of society exists, one class doing the work and the other enjoying the profit that comes from the industrial situation. In this earlier state, the contrasts in income were between surplus and cost, between profit and expense, and between public revenue and private gain. The first of these alternatives was advocated by the dominant leisure class, the other by the industrial classes. It was natural, therefore, for the industrial classes to give an emphasis to labor as the source of wealth and to wages as the one rightful income.

In modern societies the problem arises of transforming wages and labor from sentimental feelings to economic concepts. The difficulty in this comes from the fact that in a primitive economy there are only two classes and only two forms of income,—the earned and the unearned. When wages are made synonymous with earned income its claims have both sentimental and logical justification. In an industrial society the capitalist also earns an income. It is, therefore, impossible to use the term "wages" in the sense that it was used in agricultural nations. In an industrial economy toil is disappearing. Progress is measured by the displacement of the unskilled toilers and not by the increase in their income. The problem in distribution, therefore, is this: are wages in a modern society a fund having a natural basis?

The three-fold division of society is derived from the three classes present in England when economics arose. If there are a landlord class, a capitalistic class, and a class of workmen, a three-fold division is necessary. If one of the three disappears only a two-fold division will explain the facts of distribution. Which one is to disappear depends on the kind of economy dominant in each

nation. A pain economy or a downward pressure unites landlords and capitalists thus creating a leisure class as opposed to the working class. In a pleasure economy, the toilers are eliminated or transformed into a higher class, while the remaining classes blend into unity combining leisure and work in agreeable ways. The three-fold division, therefore, is logically and genetically defective. The logical division is either surplus value and wages, or rent and wages. Genetically, however, it can be said that rent tends to disappear, profits tend to disappear, interest tends to disappear, or wages tend to disappear. All four of these propositions have some proof. The first two, however, are true of a static economy and the last two of a dynamic economy. Should society become static, there would be no rent or profits; the whole income would be divided between interest and wages. If a dynamic economy should continue, interest and wages would tend to disappear and the whole income of society would be distributed as rent or profits. Work would be a pleasure, and the providing for the future a joy. Of course, this is Utopian, but it represents tendencies. In any society either profits and rent are growing and interest and wages decreasing, or wages and interest are growing and profits and rent decreasing. This, put in another way, affirms that rent represents the aid that nature gives to man; profits represent the aid of invention and character. Three forces, therefore, tend to the improvement of mankind,—improved nature, improved industrial mechanisms and improved character. The future Utopia will have little toil, and much leisure,

The origin of current theories of distribution was more accidental than designed because the three-fold division comes from the writings of Adam Smith in which it is presented not as a theory of distribution but as a theory of prices. It was the elements of price and not the factors in distribution that Smith had in mind. Prices rose, he thought, as rent, profits or wages increased and fell when one or more of them were decreasing. He assumes that progress means a fall of prices, and that families gain their advantage by the lower price of goods bought. Under these conditions, no one can obtain an advantage over others through prices because his income accurately represents his costs. The whole gain of society is measured by the fall of prices. The confusion arising from reasoning based on these premises is due to the fact that there is no name separating this economy from societies which have other determining forces

than those of price. Price has no adjective form. The result is that economists have reasoned about prices, and then have applied their conclusions to an industrial economy. They have also talked about an economic man when really their logic called for a man whose motives were determined by price. To prevent confusion, I shall speak of a price economy and of a price man. In this way we can distinguish the narrower economy determined by price from the broader economy determined by industrial conditions. In this price economy, the population gains by cheapness and not by the rise of income. What men pay represents the ultimate difficulty of attaining goods. In this society is neither unearned income nor monopoly. The dominant law would be that of supply and demand and the ruling tendency would be towards lower prices. I say this because no law can be derived from price changes that would show whether wages are increasing or decreasing. Additional facts must be added to those of a price economy before funds, whether of wages, profits or rent, can be isolated and contrasted. Some supplement to the laws of price is necessary to create theories of distribution or to enable economists to divide income into funds, be they many or few.

During the Ricardian epoch, the laws of nature are made to supplement the laws of price and to create theories of distribution. These supplements take two forms, one a materialistic, pessimistic attitude, due to the assumption that nature is failing. The other in an optimistic form contends that income is increasing and with it a progressive social state is forming. In the first group are the law of diminishing returns, the law of population, the law of rent, the law of industrial concentration, the law of increasing misery, the iron law of wages and the law of physical retrogression. All these laws have a physical background and in them the basis of modern theories of distribution is to be found. In passing from the pessimistic to the optimistic attitude, emphasis is given to another group of doctrines based on genetic tendencies which reveal themselves in history. These doctrines include the disappearance of rent and profits, the displacement of labor by capital, the rise in wages, the fall of interest, the betterment of industrial processes and the appearance of new traits in man. It should be remembered that all such laws have a basis somewhere else than in the theory of prices. The laws of distribution, therefore, depend either on the materialistic, pessi-

mistic concepts of Ricardo and Marx, or on genetic laws of social progress. One or the other is to be found in every writer on the distribution of wealth.

The defects in the current theories of distribution are again made clear by questioning the reality of the funds into which income is divided. From the general principles of industrial progress, it is inevitable that both rent and profit should arise. It raises another problem, however, to say that a definite amount is set aside for the payment of wages. There are in reality three wage doctrines of this sort contending for supremacy—the doctrine of an increasing wage fund represented by the American economists from the time of Carey to the present, the doctrine of a stationary wage fund represented by the classical economists, and the doctrine of a decreasing wage fund presented in the writings of Marx and Henry George. It should be noted that proof of a rising statistical wage is no proof of an increasing wage fund. The statistical wage is shown by combining the stationary wage of the industrial toilers and the rising wage of efficient workers. This may give a rise in the general average, but it does not prove the objective existence of a wage fund.

Wages are not a fund having one origin, but the complex resultant of many forces. To understand the organization of society, the workers who use machines must be contrasted with the toilers whose industry results in the transformation of nature. Machine tending is not toil unless the hours of work are abnormally extended. The transformation of nature usually is toil but the men of this group represent a decreasing proportion of the whole industrial society. Workers of the first class, get a wage which should be included under rent rather than under wages because it is a rent of ability. They also get a substitution wage, or what they would receive if they toiled instead of tended machines, and, thirdly, they get an organization wage, or what they receive from collective bargaining. These three elements, the wages of ability, the wages of substitution, and the wages of organization, form the basis of their income. The larger part of this wage must be regarded as either rent or profits. This makes the workers who receive it an integral part of a capitalistic society. They have as much interest in the growth of the social surplus as the capitalists have.

The toilers, however, do not even get a subsistence wage. A wage of a few hundred dollars a year is not determined by the needs

of subsistence but by the physical endurance of those who receive it. Continue the pressure, and the class must die out. The downward pressure in wages equates itself by raising the death rate. Families on four hundred dollars a year can have as many children as they please without increasing population; the deaths equal the births. Likewise the upward pressure due to increasing standards of life gives another equilibrium, brought by the fall of the birth rate. At a family income of fifteen hundred dollars a year, the number of births does not exceed the deaths and hence population is again at an equilibrium. There is thus an equilibrium caused by a rising death rate and an equilibrium caused by a falling birth rate. One or the other must dominate, and as it does, the structure of society will be correspondingly changed.

These facts show the defects of the current theory of distribution. The real cause of its failure lies deeper. Social classes have their origin in struggle and between them no economic bonds exist setting limits to class aggression. Some class is always growing while its competitors are being forced to the wall. The movement towards better resources or into industrial centers is irresistible and ends only when the dominant group crowds out its competitors. Had the resources of the world remained static this tendency would have long ago been apparent. New resources and new centers have repeatedly disturbed this equilibrium and thus renewed the old struggle under new conditions.

To state these ideas in theoretical terms demands the use of contrasts not familiar to Mill and his contemporaries who recognized only two groups of laws,—the laws of price and the law of diminishing returns. The theory of evolution has made us familiar with a new group of forces. There is an evolutionary pressure leading to increasing returns as well as the devolutionary pressure called diminishing returns. There is also a social pressure in favor of human equality that partially counteracts the effects of both evolution and devolution. These three pressures are ever in operation, each tending to produce its own individual effect in distribution. Because of them there can be no equilibrium of economic forces nor are there definite funds to be divided between the contending classes according to natural law. This failure of equilibrium makes a new treatment of distribution necessary.

VIII. A RESTATEMENT OF THE THEORY OF DISTRIBUTION

Theories of distribution have been built on a common plan. The two elements are, first, the social classes into which nations are divided, and second, the funds into which income flows. Each social class is assumed to have its income derived from specific sources. Classes therefore have definite limitations to their income which prevent them from taking the income of other classes. Within each class there is also a law equalizing income. Profits and wages, we are told, tend to equality giving just shares to all participants. This theory was a part of the economic harmonies so much admired by early economists and while modified is still generally held. It corresponds to the early English industrial development and has thus obtained a concrete setting, making the visualization of other theories difficult. In criticism of it the first question is: Are the traditional classes in England the outcome of social struggle or are they real economic groups? The second question is: Can there be an equilibrium between hostile social classes or must not each temporary adjustment be a compromise that is disturbed by new alignments of the contending groups? In other words, is all struggle within individual classes or is the real struggle between classes some of which are growing at the expense of others? In this case there cannot be economic funds setting bounds to class aggression. Some group is being forced to the wall after which event a new alignment of interests creates new victims of the same process. Such at least is the theory of evolution, and by it the theory of class struggle has been strengthened. If harmony checks struggle some compromise has been worked out between the discordant groups. Natural law forces a given action at all times and places. Compromise is temporary, local and subject to constant revision. Under which of these two heads does the income of industrial classes come?

In seeking an answer for these questions in America the observer finds a different alignment of groups from what the early English economists found in their day. America has no rent class. Land is an investment and its income is not distinct from that of capital. Few know what part of their income is rent and what profit or interest. Landlords and capitalists are thus blended into one class with common views and interests. While this blending has taken place a new differentiation has arisen among the laborers. The machine workers

and city artisans have formed organizations through which a redistribution of income in their favor has been forced. Below them are the toilers working with their hands or with crude tools. Their income is set for them by objective conditions. Workers and toilers in this contrasted sense are non-competing groups whose incomes arise from such different sources that any one name is confusing.

The application of English theories to American conditions can be tested by a review of wage arguments. No economist has said that groups of workmen could not acquire a super-wage. Both the existence of such groups and the power to perpetuate themselves were admitted. It was contended however that this super-wage was subtracted from a wage fund and hence its burden fell on other workmen. There could be no progress except by a rise in the average wage. The reasoning on which these conclusions were based runs as follows: If a given group acquired a super-wage, the rate of interest would be lowered by its payment. This reduces the margin between the income of the capitalist and his expenditures. The source of capital is frugality which demands for its exercise an excess of income over expenditure. From this excess all increases of capital come. If it is reduced by the payment of a super-wage the increase of capital is checked and the growth of industry retarded. The natural increase of population would not be provided with work; the surplus laborers would be forced back into the established industries with the result that wages would fall.

I take issue not with the logic of the wage-fund theorists, but with their view of the source of capital. Capital, they said, is savings and comes from a reduction of the expenditures of the capitalist class. There must be a group with social standards less than their income to permit the increase of capital. I would say industrial capital arises from the undivided profits in newly-exploited industries. In them a super-profit exists, and from this fund the expansion of industry takes place. No one would deny that there is a super-profit in new industries and that in seeking employment for it the newly-acquired capital flows over into other industries and builds them up. Is, however, this source of capital the leading one or does the mass of new capital come from the savings of those who reduce their expenditures below their annual income? This is the real test of the two theories. If new capital comes from the super-profit of new industries, the super-wage of other industries does not

fall as a burden on other workers but is a burden on profits. Super-profits become super-wages by a change in prices altering values in ways favorable to industries paying super-wages. The super-wage is thus a problem of prices the burden of which falls not on other workmen but on whoever loses through the resulting rise in values.

I would go further and assert that there is no interest fund because no equilibrium exists between the income and expenditures of the interest-receiving class. Interest is paid on investments in the hands of the inheritors of vested wealth. This class is not the source of new capital. Instead of their adding to capital the total of their investments is falling off and in each generation is replaced by the new inheritances bequeathed by the founders of new industries. The holders of fixed investments are not a strong class held firmly in their position by the needs of other classes. They are economically a weak class losing to the benefit of other classes in every industrial contest.

The reasoning of the wage-fund theorists was a selfish upperclass view of those who wished to pose as humanitarians without being so. Why should the receivers of a super-wage give it up so that the inheritors of wealth might save? If saving is needed could they not as easily save from their super-wage as the rich could from their investments? It is not necessary to raise this question because in the main super-wages are a burden on the super-profits of new industries. They fall partly, however, on all who must in consequence pay higher prices. Inherited wealth bears its share, the general consumer has his burden, and the toiling underclass loses employment because of the slower rate of industrial progress.

The super-wage does not fall on any special class but is a general burden on prosperity. There is no fund set aside for a specific class except the subsistence fund of the toilers. Rent and profit are funds but they have no social classes to claim them. They are diffused through several social channels and fought for by every claimant of social advantage. Economic groups do not therefore have funds given them by natural law. They must enter the struggle for the general surplus getting more or less as they succeed in the conflict that ensues. Each new equilibrium is a compromise lasting until some new alignment of social forces breaks it down; then come new adjustments but never a static equilibrium nor any fixed funds distributed by natural law.

The real struggle is not between two classes but between two forms of industry. Industry either exploits some general advantage, in which case its surplus is profits, or it exploits local advantage the resulting income of which is mainly rent. Centralized industries divide those interested in it into two classes, the controllers who direct, supervise or manage, and the machine workers upon whose activity the industry depends. The one class is interested in centralized profits; the other in personal super-wages. Between these two forms of income there are no fixed limits. Either can grow at the expense of the other. Every new struggle leads to a new compromise in which some advantage comes to the workers. There is no profit-fund that will check this advance nor is there a wage-fund to restrain the fall of wages where organization fails. Super-profits may become super-wages or super-wages may become super-profits. Peace and progress thus come not from natural law but from compromise through which alone any working equilibrium is possible.

In the exploitation of local advantage another mode of distribution is worked out which unites the rent of situation with the super-wage of efficiency. A *working capitalist* is thus evolved, since local industry is too small and many-sided to permit of class differentiation. Such a capitalist does not think of his joint income as arising from distinct funds: he blends it by a recomposition of values into one fund and thinks of it as due to his activity. His capital and his land are not distinct units but adjuncts to his personality. In this way a distinctive viewpoint is acquired that while capitalistic is opposed to that of centralized industry. To make a working capitalist takes about \$5,000 in capital which may be put into a farm, into local trade and industry or into personal efficiency through education. This means an income of from \$1200 to \$3000, a large part of which is rent, but which is regarded as wages by its participants. This class grows with the rise of rent and loses with the increase of centralized profits. A line can thus be drawn between the part of the social surplus which localities or professional men hold and the part which may be delocalized and depersonalized. In the centralized industries work and wealth are isolated. In the localized industries they are united.

Industrial evolution brings increased competition for the better grades of land and for the higher forms of personal service and thus raises personal and ground rents instead of lowering prices. If poorer land is brought into use by progress it means that the better

land is being put to some higher use or that other industries are increasing their productive power. The loss through increasing rents is more than offset by the greater profit in other industries. When we recognize that rent is a lien on profits and not an indication of diminishing returns, we see that its growth is an index of progress even if it creates for favored individuals an unearned income. Poor land is thus discarded or put to some lower use. In a like manner the growth of the super-wage indicates an evolution by which the less efficient are crowded out or forced into less effective occupations. The disuse of poor land and the lack of employment of inefficient laborers is a part of every forward movement. Evolution brings out latent differences in both land and men and emphasizes the better at the expense of the poorer. It is a sign of progress to have differential incomes increasing. Evolution helps the better more than the worse.

These two pressures determine the natural distribution due to objective conditions. Social distribution counteracts the results of struggle in three ways: by taxation, by the organization of laborers, and by the conservation of life and resource. A measure of equality is thus secured but never enough to prevent the workings of evolution. Distribution is thus complex, following no one law. It is the net result of many laws all of which must be understood before a solution can be reached. Natural law is but an element in the final result. Its funds dominate in primitive distribution, but they fail to explain the facts of modern industry.

From these facts and the resulting modification of social classes a theory of distribution arises which may be stated as follows: There is but one social surplus for which all industrial classes contend and among whom it is divided not in definite funds but in parts altered by each new alignment of economic forces. At first this surplus becomes industrial profits through the increase of efficiency and the improvements of nature. Part of it is then transferred to a rent fund by the increase of local and personal advantage. Another part as undivided profits becomes capital, the return on which is interest. The part used socially by the state and absorbed in its expenses is taxation. The part secured by workmen through organization or local advantage is the super-wage. The residual or pure profits is the share of centralized industry. In addition to this surplus there is a subsistence fund for the toilers which may be inadequate

for their conservation and in proportion to their numbers tends to decrease.

Such statements differ from those of the wage-fund theorists. They differ not less in the action called for than in the theory itself. The one view demands activity of the workers in securing their rights; the other gives them an income fixed by natural law. It seems simpler and less troublesome to have the laborers penned within bounds and to have their income handed out to them by fixed economic laws. In reality, however, the difficulties are thereby increased. The laborers will act in any case and if industrial relief is denied them whether by nature or man they will resort to political action to enforce their demands. The choice is really between a political socialism that would absorb all profits and such direct action on the part of laborers as will insure them a share in the social surplus. In the one case they act unitedly and are interested in the overthrow of existing institutions. In the other case they act as an industrial group and force such changes in prices as will permit of increased wages.

Every change in wages forces readjustments in values favorable to the industry in which it is made. The burden falls on the super-profits of new industries if profits are increasing more rapidly than wages. If, however, wages rise more rapidly than profits, family budgets are burdened by the excess, and a recomposition of budgetary values ensues. In this change the working capitalists are protected by their increasing personal efficiency. The budgetary losses thus fall mainly on those with fixed incomes; this means that it falls largely on inherited wealth. Practically, therefore, it may be said that high wages are a burden on centralized wealth enjoying super-profits, or on inherited wealth in the form of fixed income. These classes have no way to recoup their losses. High wages thus result in a redistribution of wealth to a greater degree than in a redistribution of income. The working elements of society gain at the expense of the leisure class. Socially this is advantageous even if it is wrought with much individual suffering. It is better to have economic law distribute income through group pressure on prices than to have the whole social organization upturned in a class struggle for social control.

IX. PRACTICAL APPLICATIONS OF THE THEORY OF DISTRIBUTION

Two important facts have been brought out: a large social surplus exists; its distribution is not determined by natural law. Less than a third of the income of the people of the United States has its distribution fixed by natural conditions. The rest of it is distributed by social laws. This statement will not be readily accepted for two reasons. Many economists attached to the doctrines of natural law, dislike to see the old viewpoint disturbed. Another type of opposition is of more practical importance. I shall state it in the words of a reformer to whom I recently presented my view. His comment was that if my argument could not be refuted the result would be confusing. He admitted that if a man inherits ability and from it gets an income of five thousand dollars a year, his income is no more earned than if he inherited a corner lot. But the older viewpoint gave a decision as to how to increase public revenues. All this is thrown into confusion by any indefiniteness in the statement of natural law. One can no longer say, "Fix the rent of each farm or city lot and take as much as is needed for public purposes." This apparent confusion I admit, but I do not believe it indicates any ultimate confusion. The difference between the older and newer view can be put in this way. The earlier economists said that economics treats of the production and distribution of wealth. If economics is divided into two departments, the theory of distribution is the end of economic theory; and in it a decision must be made as to how income should be distributed. This view was simple and clear so long as production and distribution were thought to be determined by natural law. As soon, however, as it is realized that distribution is not determined by natural law, it must be replaced by views based on other principles.

A new definition of economics should run like this: economics treats of the production, distribution, control and consumption of wealth. After the theory of distribution is explained, theories of wealth control and of wealth consumption should be discussed. It is not, therefore, an objection to a theory of distribution that it does not settle the distribution of wealth if it is followed by other theories the joint effect of which is to give the needed decision. This position does not differ materially from that of Mill. He affirms the reality

of social control and the importance of the consumption of wealth. He, however, regarded the generation of public opinion as not being within the range of economic theory. He says that human opinions "are a part of the general theory of human progress, a far larger and more difficult subject of inquiry than political economy." This was a good statement of economic theory in 1848, but it is not correspondingly true at the present time. The theory of social control is now well developed and economists can with confidence enter a field that Mill of necessity avoided. Another change must also be made to bring Mill's statement down to date. Speaking of the laws of the distribution of wealth, he says that they are a matter of human institution solely. "Mankind can do what they like with what they have produced and place it at the disposition of whomever they will on whatever terms they please." This is an over-statement. It is not true that public opinion has any such control over the distribution of wealth; it is true, however, that there are options in the distribution of wealth, and these options are of importance in economic decisions.

Three supplementary theories must be discussed before the distribution of wealth becomes definite. There must be a law of prices, a law of progress and a law of social control. In each of these fields are opposing theories, one of which must in the end be accepted. As to prices, there is the theory of cheapness and plenty formulated by Adam Smith which makes the criterion of progress the reduction of prices. Opposed to this is the theory that prices cannot as a whole be raised or lowered but are altered to the advantage or disadvantage of particular groups. In the field of social progress utilitarian doctrines set up as a measure of progress the sum and distribution of happiness. Opposed to them is the evolutionary concept which assumes that progress is measured not in happiness but in the growth of new types and in altered social relations. Of social control there are five kinds. The oldest type is ancestral control which at present is mainly exerted through the church and the courts. A second type is wealth control best seen in leisure class privileges. A third is group control, by which I mean the organization of industrial groups so that they can alter the prices of the commodities they make. Industrial groups that can raise prices grow strong and survive; those that cannot fail and break up. A fourth type of control is family control. That kind of a family

perpetuates itself that intensifies the enjoyment of the goods its income permits it to buy. Intensive family life, therefore, is measure of family control. The fifth type of control is coercive state action.

It is not likely that either ancestral control or wealth control will dominate in the future. The church and the courts have less influence; the leisure class is losing its power. Group control, however, and family control are growing and are in reality two sides of one problem. The group is the unit by which producers unite for the purpose of increasing prices. The family is the unit in which the same people unite to intensify their consumption. The two together make voluntary control, which is to be set over against the coercive state control. The real choice of the American people lies between voluntary control and coercive state control. I shall not attempt to describe state control because this is already familiar to the public, but how voluntary control would operate needs description and its laws need enunciation. The central point of voluntary control is the budgetary concepts of the families that participate in it. This means that discussion must be shifted from distribution to family budgets and to this field I shall turn in the following sections.

Before doing so, however, it is necessary to point out the place where these doctrines will be brought to the test. From time to time commissions are appointed to determine the right of laborers to an advance in wages. These commissions must have a theory of prices, a theory of progress, a theory of social control, and they also must make decisions in regard to the centralization of industry. One way of showing the practical application of these theories, is to state the views held by the Interstate Commerce Commission. In discussing the right of the railroad employees to a higher rate of wages, one of them is reported to have said that no rise in railroad rates would be permitted to meet such an increase in expenses, and if a change in wages were made, it should begin with the lower classes of laborers rather than with the higher. A third doctrine should be added to these in order clearly to understand what issues are in such decisions—the doctrine that low freight rates are nationally advantageous. Before it can be determined whether or not railroad rates should be increased to allow an increase in the wages of employees, it must be decided whether high prices or low prices are socially advantageous. This decision is a part of the theory of

prices and not of distribution. The second proposition comes under the theory of progress. It is a question of evolution as against utilitarianism to decide whether the wages of poorly paid employees should be raised before those of the better paid workmen. If we were attempting to improve a breed of animals, we would not begin by trying to improve the poorer stock. Do animal progress and human progress have different laws? Low freight rates favor the centralization of industry, while high freight rates tend to localize industry. There is the same problem internally in regard to freight rates as externally existed in regard to the tariff. The theory of industrial centralization is not a part of the theory of distribution and yet some decision about it must be made before theories of distribution have a practical value. These theories demand conscious attention. When they are decided the theory of distribution is definite and of great practical importance.

X. BUDGET MAKING

In current theories of distribution two radically different forms of society are confused. By trying to blend them into one social concept economists have set for themselves an impossible task and thus paved the way for the failure of their theories. They have assumed that the national dividend was divided into definite funds from each of which a distinct class obtained its income. There are funds but they are not all derived from the same social structure, and hence they cannot be added together to make one national dividend. Rent and profits are integral parts of a pleasure economy and become recognized only in a highly specialized society. A subsistence fund belongs to a primitive pain economy. Wages are a definite fund only when they are the equivalent of the toil of production or of the subsistence fund needed to perpetuate the working population. When values are due solely to work, rent and profits represent the exploitation of labor. On the other hand if the growth of rent and profit indicates progress the wage fund represents the still unsurmounted obstacles standing in its way. Theoretically an advanced society should have no wage fund, nor on like grounds should a primitive society have a rent or profit fund.

Economists however have seized neither of these bold concepts but have tried to compromise between them by assuming that the laborers are in a pain economy struggling for subsistence, while the capitalists are in a pleasure economy, enjoying rent and profits. This compromise creating a national dividend composed of three definite funds may have fitted the conditions of England in a particular stage of its progress, but it cannot be accepted as a general law. Every new adjustment shifts the relations between profits and the income of the toilers. If the surplus grows, the toilers are driven into narrower fields: if it falls off, profits shrink and the subsistence fund becomes relatively more important. Between them however there are no definite relations such as would create fixed funds each with its own laws. There is no equilibrium between struggling classes. The weak do not divide with the strong: they are either destroyed or driven from the field.

If income is not divided into funds some other viewpoint must be adopted to discover how income is distributed between strug-

gling groups. Socially the equilibrium must be looked for not in a series of funds but in a series of budgets, each of which represents the forces acting on a given class. In each budget there is a recomposition of values so as to force an equilibrium between receipts and expenditures. To add to costs in one particular, forces reductions in costs in other quarters. To reduce costs likewise alters the value of other items. A change in one estimate forces changes in every value relation. This doctrine has often been stated in the abstract but no application has been made of it in distribution. A budget is another name for the value estimates which each man or group of men make when at stated intervals they round up their relations to other men or groups.

Budgets are social estimates. No man forms an equilibrium by himself. He is a part of some family thus modifying his estimates of expenditures, or he is a member of some cooperative group of producers and thus acquires social estimates of costs. Usually both cost and expense estimates are social and hence on both sides of the ledger there is a recomposition of values. Each item gets its value by a process of social imputation and not from direct estimates of the pleasures and pains involved. Pleasure and pain disappear as psychic quantities and reappear as social estimates of cost and value. Pain is socially thought of as expense and pleasure as value. Every budget thus equates at some equilibrium and thus gives a social measure of group standing. This shift from natural standards to social standards furnishes the economic measure of progress. Primitive men have more or less as nature's abundance alters in amount. The budget maker rounds out his relations to nature in such a way that he has an equilibrium independent of nature's variations. These budgetary forces are the active agents in distribution; as they increase or are modified the national income is forced this way or that. A nation thus has a group of budgets each with its own forces, but not a group of funds each with its own laws.

There is a budgetary assumption back of current thought although the method of expression hides its real character. The trade of two nations equates itself in a budgetary balance brought about by a recomposition of values in each nation so as to bring trade to an equilibrium. This national budget and its influence on values are well understood. It is also recognized that each class has a budget in which there is a similar recomposition of values to that

taking place in international trade. This is the theory of non-competing groups. It is, however, not so clearly seen that each business enterprise has a budget in which a similar recomposition of values takes place. Does a business firm merely add up costs and sell at a given profit, or does every change in costs force other changes both in costs and values so that a budgetary equilibrium is preserved? Another way of putting the problem is to ask whether, with each addition to the costs of single items, the value of the final product can be correspondingly increased, or must this growing cost in one respect be met by increasing economies in other items? What power, in other words, have business men to increase prices when costs increase and what likelihood is there of a fall in price if costs are reduced?

The answer to these questions depends on whether the business man is looked on as a bookkeeper who gives his statistics to the public in price tables or whether each business group is a unit with a budget in which a recomposition of values is worked out. The answer has been given by economists but their reasoning has not been generally accepted. In fact two theories have been presented each with its advocates. Adam Smith said that values were the sum of costs and that they increased or decreased as costs rose or fell. This popular view has its best expression in free trade doctrines. Ricardo however contended that the increase of costs does not increase values: it lowers profits. The Ricardians were quite willing that trade should concentrate in England but they were not willing to say that the benefits of this trade were wholly English. They did, however, say that all the benefits of English industry went to the capitalists as profits, and that the laborers were paid from a fixed fund that had no direct relation to the productivity of English industry. In which were the English economists right,—in their assumption that the laborers did not share in the benefits of increased production or that foreigners who traded with England did? It is plain that they used the theory of Adam Smith in the one case while they used the Ricardian theory in the other. It is also plain that the Ricardian theory is a budgetary concept involving a recomposition of values. Capitalism is industry organized for profit. A producer becomes a capitalist as soon as he keeps his accounts so that profits and costs become distinct. His viewpoint now shifts so that he measures every act by the way

it affects his profits. There is a revision of his estimates, so that costs figure as pains and values as pleasures. He thus creates a social viewpoint that distinguishes him from the primitive worker.

In a primitive society the wealthy class are not budget makers. The limit to their expenditure is the varying annual produce of their land which is easily overrun in any nation where there is a money-lending class. The rest of the community is divided into traders who scheme and the toilers who suffer from exploitation. Primitive traders are notoriously unscrupulous. They prey on one another as well as on the community. It is from their cut-throat methods that the theory of competition arose. When traders are transformed into producers each sale ceases to be an individual unit brought about by the higgling of the market. It becomes an item in a ledger showing not the high profit on individual sales but the average profit on many sales. The merchant deals with a group and his methods must become social to succeed. No one can become a statistician without socializing himself. The trader is thus brought into harmony not only with his community but also with his fellow dealers. Competition is in harmony with high return on single sales: it is not in harmony with high average profits. No one keeps an accurate ledger of receipts and expenditures without finding that his average profit is lowered by price cutting. He may thus dispose of otherwise unsalable goods or gain by some uncontrollable exigency of the market but his average profit will fall off. Budget-makers deal fairly with consumers and cooperate with fellow producers. Square dealing and cooperative methods are the only means of raising the rate of profit.

Competition is not a human trait but an unsocial tendency. It fails in large scale production because this is the first to be socialized. Large producers keep accurate books and know the cost of competition. They are the first to place high average profit in the place of high profit on single sales. Gradually, however, the small producers are becoming budget-makers and as they do their action differs from large producers only in being more social and hence more coercive in their demands that all members of their group live up to the standards of the trade. High social morality and high average profits have the same roots because they are both the results of the socializing influence of budget-making.

The theory just stated gets a practical bearing when it is asked:

Does prosperity raise wages and lower prices or does it raise profits? If competition is social and group unity unsocial, the increase of prosperity should lower prices and raise wages. The gains of social progress would thus diffuse themselves among consumers and workmen. If, however, group unity is the effect of accurate budget-making, the pressure of economic progress will favor socialized producers at the expense of family budgets. Profits grow by the failure of prices to fall when the expenses of production are reduced. High rents result from a rise in prices. When prices are rising rents are growing; when profits rise costs are decreasing without a corresponding decrease in prices. There is thus a decisive test as to whether the consumer is injured by the rise of rents or of profits. When he fails to secure benefit from improved production profits have risen. When he pays more for goods rents are on the increase. Higher prices show that the national income is being transferred from profits to the rent and also that localized differential advantage is growing at the expense of centralized wealth. Rent is either a return for local advantage, for favorable positions, or for special ability. What a man gets for his individual powers, whether due to education or inheritance, is rent as truly as the income from a corner lot or a mine. Industries, therefore, are centralized, in which case their return remains profits, or they are localized, in which case their return is mainly rent. Profit and rent represent two opposing tendencies, and from the opposition thus developed comes the acutest problem of modern civilization.

Budget-making is the force uniting men into groups and blending smaller groups into larger ones. It makes a social group out of all who keep their budgets in the same way, and creates an economic morality that prevents the aggressions of individuals from injuring members of the group. Of these budget-makers there are several varieties, or perhaps it is better to say budget-making has gone through several stages of development. The first type of budget might be called a nature budget because the contrast is between what man does in production and what nature does for him. The surplus is then the aid nature gives. These estimates are true of an isolated man gaining advantage over a reluctant nature. They are defective in that they overlook the effects of invention and neglect class antagonism. The second type of budget is the national budget so much emphasized by protectionists. While apparently national

it is in reality a class viewpoint, because tariff schedules are made by manufacturers and reflect their interest. A third budget is that of the centralized industries. Wealth not welfare gains recognition. All progress thus seems bound up with and measured by the growth of capital. From such industries there is no hope of lower prices, but at the time there is little danger of a rise. The fourth type of budget is that of the working capitalist. Here the estimates are in terms of work. Capital is an adjunct of work but not an independent agent. The farmer says he has done a day's work when he has plowed eight acres of corn because he thinks of himself as the active agent in the process. He says he raised eight hundred bushels of wheat, not that his farm produced it. A physician also says that he cured the patient, not that his acquired skill did it. All professional men think in terms of work and overlook the capital involved in their education. They have no budget showing profit; it shows only day's work and annual income. Profit and work are thus symbols of opposing budgetary ideas, and the two views seem to clash where there is in reality a fundamental unity. To think in terms either of capital or activity shows defective budgetary concepts which the future development of budgetary relations will remove. There is a unity even if as yet it is unseen. All budgets would harmonize and blend if they were complete enough to show the needed facts.

XI. FAMILY BUDGETS

The fundamental change separating industrial nations from their primitive predecessors is the rise of budgetary concepts and the resulting recomposition of economic and social values. Modern calculation forces readjustments through which primitive emotions are decomposed and reorganized in more effective ways. Emotional outbursts are thus suppressed or turned into useful channels. The first of these budgets was the nature budget that traces the source of welfare either to the favorable action of nature or to the work of men. The second was the national budget made prominent by the mercantile economists. The commercial budget came next in which the emphasis of profits and costs became prominent. The budget of the working capitalist is the most recent addition to this series. It is harder to name this type of budget because it appears in many forms each of which is too specific to be generally applicable. The product which the worker with machines imputes to himself is largely the product of the machine he uses. So too the farmer's product is largely that of land, the small dealer's product is partly that of his location, while the product of the professional man is mainly that of acquired skill due to capital sunk in his education. In each of these cases there is a joint product of rent, capital and energy imputed to the active agent as work. This is a recomposition of values which brings a social reconstruction in harmony with budgetary needs. Call this class what you may, it is the largest and strongest class in modern societies and by its action the progress of the future will be shaped.

The growth of budgetary concepts does not cease with these developments. There are other types of budget forming of which the municipal budget is the most easily recognized. But of more importance, although thus far more indefinite, is the family budget now so forceful in shaping social estimates.

Personal development is said to be a recapitulation of the history of the race. The child starts early in his emotional life and becomes rational as he suppresses emotional estimates and puts in their place values formed by the budgetary group of which he is a part. The word "family" has two meanings. We think of it as an emotional group whose ties are sexual or we think of it as a budgetary group

held together by common work and life interests. The first sort of a family has no budget. Its morality consists of emotional checks voiced by tradition. Family budgets represent the change that comes over families as they rise in efficiency, and are thus capable of putting into effect economic checks to the evils from which they suffer.

The first effect of improved production is to raise profits. What are the forces that take revenue from this fund and transform it into wages or into cheap commodities? Protectionists reply that national prosperity brings high wages, and thus adds to the family income. Free traders, on the contrary, argue that their policy reduces costs, and thus aids families on the expense side. These two seemingly different policies are rooted in the same economic doctrines. Prosperity lowers costs, and thus permits a higher wage rate, says the one; prosperity lowers costs, and thus reduces family expenses, says the other. A third possibility that prosperity, by lowering costs, raises profits is overlooked by both disputants. Which then is good economics: prosperity raises wages; prosperity lowers prices; or prosperity raises profits? To answer this question the nature of industrial changes must be explained. Improvements of the nineteenth century have been especially prominent in iron and steel production. A second group of changes show themselves in a lowered cost of transportation; a third in agricultural machinery. These improvements affect the family budget only indirectly, either in the price of houses or of food. The real cost of producing food has fallen, but instead of lower food prices there has been a rising price of agricultural land. The burden of higher prices is on raw materials, farm buildings, fences and machinery, and building material in city homes. None of these items enters into family budgets. Between producer and consumer, in all these cases, there is a landlord to whose benefit the lower costs accrue. Family budgets do not, therefore, show the improvement that industrial changes would warrant. Rising profits check the growth of wages; rising rents absorb the gains of industrial efficiency. Family budgets face a deficit where, if the relations between costs and expenses were direct, there would be a surplus.

There are articles, however, to which the consumers' relations are still direct. Of these, sugar, wool and silk are important. To families with an income above \$1,000 a year, they form a burden of

say five per cent of income. The same families are paying twenty per cent of income as rent. Let me illustrate in my own case. I buy three suits a year, on which the tariff duties are ten dollars each. For room rent I pay four times as much as for clothes. It costs me two dollars a day for food, of which one-fourth is rent in some of its various forms. My tariff duties are not more than fifty dollars a year, while my payments for rent exceed \$800 a year. This is a fair sample of incomes above \$2,000 a year. It is rent, not the tariff, that makes the burden under which the workers groan. What the landlords, city and country, obtain is that part of the gains of concentrated industry which the trusts, railroads and the protected industries have not been able to hold. There is a real opposition of interest between the centralized industries, whose gains are profits, and the localized industries where income is mainly rent. It is possible to aid Illinois farmers at the expense of Pittsburgh profits, or New York landlords at the expense of those of smaller towns. Neither group, however, has any right to claim they represent the people. To transfer dollars from New York to Wisconsin is no more to the public interest than a movement in the other direction. The family budget is not improved by going from city to country, or from Iowa to Texas. Local advantage is absorbed in land values. To move is merely to change landlords. To vote another ticket may help this politician or that, but it will not remove the deficit from the family budget.

The annual produce of a nation is thus distinct from the sum of family budgets. The total income of families equals the total output of personal energy, but the annual produce that results far exceeds the sum entered on the expense side of the family ledger. All that goes to replace capital or to increase capital forms no part of family budgets. If the annual surplus of a nation were used to increase capital, a steady growth in the number of families would result, but no change in the average family budget. Such a nation would be called prosperous and trade statistics would prove the contention. It would, however, be a national not a family prosperity. Some other change than mere growth must take place to alter budgetary relations.

We get an explanation of budgetary improvement by contrasting personal income with vested income. Personal income comes from productive acts which cease when the producer dies or is disabled.

Vested income is impersonal and is enjoyed by some one so long as production is unaltered. All profit and rent are vested income. The share that goes to them is capitalized and remains a fixed charge on industry. Family income increases as personal income grows. It is not altered by what increases vested income. The sum of profits and rent is thus outside of the influences affecting family budgets. There is a well-known economic law which says profits fall as wages rise and rise as wages fall. The newer expression of this law is that the sum of family budgets increases in amount as vested income falls off, and is reduced as vested income grows. Whatever reduces the price of articles composing the fund replacing capital benefits vested income by the resulting rise in profits and rent. If industrial improvements reduce the cost of articles in the replacement fund and not those entering family budgets they will increase vested income without any necessary alteration of family welfare. There is a gap between national prosperity and improved family life that must be filled in some other way.

Higher values for personal services do not seem to relieve the situation because the change merely raises prices and does not alter price relations. This objection would hold if all personal services were used to produce consumers' goods. Much of them, however, is employed to replace capital. In so far as the higher prices of services increase the value of the replacement fund, the burden of the change falls on vested income and not on family budgets. All of the increased value of personal services goes to improve the monetary side of family budgets while only a part of the increased cost falls on the expense side. Roughly speaking, two-thirds of the laborers are used either to increase capital or to make non-consumable goods. The major part of the growing cost of personal services thus falls on vested income. Consumable goods rise in price but the capitalized value of investments falls off because of the decrease of vested income. There is, therefore, a way in which budgetary values can react on the industrial situation. Is there a practical way in which it can be realized?

To answer this question the social effects of budgetary pressure must be analyzed. Wants in a progressive society grow more rapidly than the means of satisfying them. This creates in family budgets a state of chronic deficit. There is no hope of relief through decreasing costs, because low prices are the index of low values of per-

sonal service. The family budgets lose, therefore, on the income side, all the savings that low prices bring while the gains from low costs accrue to the benefit of the replacement fund and hence raise profits at the expense of personal income. Reductions in prices thus increase the budgetary pressure. The relief must come from other sources.

Budgetary pressure comes from whatever intensifies family life and puts its welfare above other units, groups or ideals. Its growth is mainly due to the socialization of ideals by which personal, national or religious standards are displaced or incorporated into those of the family. Early religions emphasized a future state, primitive morality emphasized the repression of wants, while national preservation depended so fully on struggle that it emphasized military valor and self-effacement at the expense of family obligation. All these external pressures must be removed before social ideals stand out in contrast with those of primitive societies. The new standards are, however, plain enough to permit of their enumeration and valuation: Health, leisure, recreation, education, home, food, clothing and social service are among the forces increasing budgetary pressure and to them social progress is due. In contrast to them, however, stand certain other tendencies that relieve budgetary pressure. Prominent among these are:

- The increase of personal efficiency.
- The industrialization of women.
- The lengthening of the working life.
- The shortening of the working day.
- The increasing power of substitution.
- The intensification of activity.
- The increase of family altruism.
- The diffusion of wants.
- The socialization of household expenses.
- The increase of taxation.

Most of these tendencies need no explanation. An exception to this is the law of substitution. If low prices cannot be secured through the competition of producers, there remains a possibility of relief through the shifting of consumption from costly articles to those less expensive. The change from woolen to cotton clothing

or from meat to cereal food illustrates widespread alterations in consumption that do much to relieve budgetary expenditure. This power grows steadily and is the only effective check to high prices. Low prices form the goal of industrial progress to be attained by the consumers having many ways of satisfying their wants. A socialized community has no effectual escape from monopoly except by changing desires so as to utilize new commodities. The fate of the consumer lies solely in his own hands. The competition of producers is a vain hope resting on a misunderstanding of economic motives and of the social forces they generate.

Family budgets have, however, another source of relief. Checks to expenditure tend to bring the family budget to an equilibrium and are the basis of industrial morality. The effects of this new morality may be stated in the following terms:

- The increase of sex restraints.
- The decrease of the birth rate.
- The delay of marriage.
- The economy of house rent.
- The economy of costly food.
- The economy of time.
- The decrease of saving.
- The increase of life insurance.
- The sacredness of trusts and contracts.
- Promptness in fulfilling engagements.
- Restrictions on child labor.
- The decrease of luxury.
- The reduced use of intoxicating liquor.
- The increased valuation of future welfare.
- The love of economy for its own sake.
- The socialization of industrial groups.

Such are the moral effects of budgetary pressure and they rank high among the causes that relieve it. Do what they may, however, there is still a net deficit in the normal family budget which must be met by a rising value of personal services.

Budgetary pressure in distribution acts either against vested income or it forces the toiling underworld into a less favorable position. There is no economic law that will prevent or restrain this

pressure. Wage funds and interest funds are antiquated concepts derived from pre-industrial conditions. The power of survival is always in the hands of one class. Industry gives it to the working capitalist as the earlier military society gave it to the leisure class. Society is in the hands of those who combine thought and work. In this unity lies the hope of the future.

XII. THE HIGH COST OF LIVING

The recent rise of prices has created a demand for new investigations and new theories throwing light on price changes. With two theories of price changes the public is already familiar; the theory that rising prices are due to the increase of money and that they are due to monopoly. We know the effect of rising prices on various incomes, on business activity, on the value of property, on saving and the distribution of wealth. Changes in monetary prices have occurred often enough and have been sufficiently widespread to establish valid conclusions on all these points.

I state these facts to suggest that these two fields do not cover all the cases of price changes. The current high prices may not come from either of these causes but from economic phenomena not fully observed and hence without a theory for their explanation. The demand is, therefore, for an hypothesis about which to organize the new facts and then for statistical investigations to verify the preliminary hypothesis or to point the way to a better one.

I shall start therefore by asking a question: what would be the effect on prices if the supply of loanable capital should fall off? To answer this question a clearer definition of loanable capital and a better contrast between it and other types of capital must be devised. Adam Smith thought of capital as a stock of goods annually produced and consumed by the participants in production. By capital we now mean any permanent investment from which income is derived. A contrast is sometimes drawn between fixed and circulating capital but of it little use has been made. Economists state it and then pass along to draw conclusions about fixed capital which forms the bulk of national investments. In my opinion the stock of Adam Smith, the commodities of trade, circulating capital, loanable capital and consumers' goods are practically the same fund named differently as it appears in various forms. It would need a more concise definition to make them equivalent but in so doing we violate no usage and help towards the acquisition of clear ideas.

Loanable capital must be in some mobile form so that it can be employed in many ways. A bolt may be used or not used, but its destiny is fixed. It must go into a given mechanism. But food and clothing may be used by different people and hence their trans-

formation may produce a multitude of objects. Their direction is not determined until the loan has been made and used up by given workers. If this mobile stock is in the hands of a banker it is called loanable capital; if in the hands of a dealer it is called commodities; if talked about by an economist, it is circulating capital, and if in the hands of a consumer, it becomes consumable goods. The view depends on the problem we desire to discuss but in all the views we have one objective fund standing in contrast to the fixed investments of the nation.

Practically all loanable capital is in the hands of bankers and disposed of by them at given rates of interest. The rate of interest is determined by the return on circulating capital and not by the return on fixed investments. It is fixed by the difference between the value of the consumable goods used up in an act of production and the consumable goods that this act creates. Fixed capital yields a net return which is valued through the rate of interest. A net return of \$10,000 and a four per cent rate of interest means an investment value of \$250,000. We then say this investment yields four per cent when in reality the rate of interest was the cause of the value and not the reverse. The measure of interest comes to light only when consumable goods are used to make other consumable goods. It follows from this that the rate of interest is the index of the amount of consumable goods and thus of loanable capital. If it rises, the amount of consumable goods is falling off relative to other forms of wealth. If this did happen, would it affect all prices alike and thus act as alterations in the supply of money do, or would it be felt in particular ways and under given circumstances? Here is a query that it is at least worth while to follow up.

Alterations in the quantity of loanable capital are due to changes that affect consumers. If there is less consumable capital, the consumer has in some way altered his habits. Funds that were formerly set aside, and thus came into the hands of bankers, are now used in other ways. This means that families have found new openings for expenditure and have less to save than formerly. If this is true, a better tabulation of wealth statistics would reveal a falling off of saving, even if familiar statements of facts seem to prove the reverse. But to make this clear needs some revision of definitions and more care in statistical tabulation. One difficulty is in the definition of saving. If a man working for wages spends less than

he earns the surplus becomes loanable capital. If, however, he enters into business, he uses his capital and goes to the banker for more. Small businesses are of such a nature that personal skill is essential to their success. The capital used is an adjunct to the skill and the joint return is regarded as due to the person and not to the tool or stock. Most capital in sums of less than \$10,000 is personal capital of this sort. Its increase means a shortage of loanable capital. If savings are defined as a loanable fund, used by some other person than the saver, then savings have fallen off and at the same time the personal qualities and virtues of the non-savers have increased.

The non-saver of earlier generations was an extravagant individual without family ties or social motives. Non-saving to-day is a budgetary pressure forcing alterations in the family expenditures. The non-saver is now a higher type of a man than the saver, just as the saver was an elevation of type above the extravagance of more primitive men. This higher family aims to create a flow of income to enjoy and not an accumulating fund for future support. Its striking effects are manifest in the pressure to reduce the birth rate and to delay marriage. The budgetary equilibrium is attained not by reducing expenditures but by elevating the family to a higher social status where more efficiency produces the needed income. This means an increased demand for education and a delay of the time when children enter industry. Economy is thus forced on each generation of parents to put their children in a station above their own. This economy shows itself not in a personally unused fund but in an intenser use of present income. With a boy at college the family income is fully used, the banker gets no new funds, deposits may even fall off, and yet by the pressure the family is elevated in social position through the increased earnings of the son. Measure by the year and there seems a loss. But a survey made after a half century would show more earning power and a better adjustment of income to expenditure. Progress is by epochs; failure shows itself in short periods. It forms the temporary curves that delay but do not prevent the rise of standards and the increase of welfare.

If we shift the view from the family budget to that of the banker, we find another pressure forcing a flow of capital to more effective points. The function of a bank is not to create capital but to economize its use by checking the expenditures in places where the return is low and causing a more rapid flow of capital in productive directions.

This in practice brings two results: investments of fixed capital are favored and personal loans are concentrated in the hands of the more efficient producers. Increased economy thus means the more effective use of loanable capital in the form of consumable goods, so that the fixed investments may be increased. Progress is made either by improving the personality of those who control the making of consumable goods or by the permanent transformations of nature that fixed investments promote. The pressure on the banker to find a more efficient type of local producer is matched by the pressure on the family to be more efficient so that the family status may be raised. The family saves less and spends more so as to bring this about, while the banker uses his reduced loanable funds to so much greater advantage that the shortage in savings is made up by the increased skill of the banker. Progress thus goes on, but if we look beneath the surface the forces that make it are radically altered. Personal efficiency rather than a growth of population is now the great force in increasing wealth. The line of progress has been from saving to efficiency and from a stock of consumable capital to permanent investments yielding greater income with less current expenditure. With the uplift of the personality of those using capital has come a better social spirit and a replacement of competition by co-operation. It is thus easier to get groups of producers to combine to prevent waste and when they combine the maintenance of fixed prices is more readily insured.

High prices of consumable goods are thus the natural result of the increase of personal efficiency on the one hand and of the increased economy of circulating capital on the other. The need of increased efficiency cuts down the supply of loanable capital and the smaller supply of loanable capital creates a demand for more efficiency in its use. High personal incomes are the complement of a high return on capital. The scarcity of capital causes an intenser use of labor while the scarcity of labor causes an intenser use of capital. An oversupply of cheap labor is the index of an early civilization, while dear labor and a deficiency of loanable capital offer evidence of a newer type manifesting itself in contemporary events. We have become used to the thought of a rising rate of personal income. We lack the complementary thought that a high rate of interest is also the index of progress. The reason for this lies in the acceptance of an antiquated theory of distribution making it appear that a rise

in the rate of interest is at the expense of wages. This is perhaps true of a static society, but in a dynamic society the less effective forms of both labor and capital are eliminated and from this change there should result both a rising rate of wages and of interest. The more careful investigations of recent years have shown the slow but steady rise of wages and a more than corresponding improvement in the welfare of laborers. It is more difficult to prove a rising rate of interest. There have often been changes in the local rate of interest but there has been no marked change in the rate paid on secure investments. Either the rate of interest has been a conventional matter not indicating the rise and fall of profits, or family ideas of stability have altered so little that a steady flow of new capital has been assured without adding to the inducement to save. There are now indications that this is changing. Secure investments have a less favorable market than formerly which may indicate a permanent change in the attitude of the public towards them. Life insurance has become so safe that it offers greater security for the family than any investment. It would thus seem to add to the causes that check the increase of loanable capital, and in this way help to bring about a rising rate of interest.

If greater personal efficiency, a higher wage, less loanable capital and a higher rate of interest are parts of a complementary group of changes, there would result from their joint effect a new adjustment of prices and a series of price alterations different from those now recognized as coming from monopoly or from alterations in the supply of money. High wages and high rates of interest would raise the price of consumable commodities; they would, however, lower the value of permanent investments. The higher wage would reduce the net income of permanent investments while the higher rate of interest would reduce their face value. A five instead of a four per cent rate of interest reduces the value of investments twenty per cent. High prices of consumable goods that enter family budgets mean also high wages and high replacement charges on fixed capital. A larger part of the total income of society thus flows into family budgets. While they are the index of blessings in the hand and in the future, high values of consumable goods are a real hardship when measured from year to year. The rise in income comes in lumps with the new efficiency of the rising generation; the price changes are a steady pressure always felt and always the cause of a current

deficit. Each family runs down as it grows old but is replaced in the end by a new family on a higher scale of existence. The apparent fall and the increasing pressure are thus blessings in disguise, indicating deeper currents that counteract their visible effects. The flow of social progress is all in one direction: the apparent failures are in reality short-sighted views of a larger evolution.

The important facts after all are the changes through which industrial evolution is carrying the nation and not the passing items of momentary interest. Only when they are all grouped together and inter-related can the trend of progress be seen. The following are some of the elements now visible in industrial life:

1. High prices of commodities.
2. Higher family incomes.
3. The industrialization of women.
4. The delay of marriage.
5. A low birth rate.
6. Restrictions on child labor.
7. The increase of industrial education.
8. The increase of voluntary associations.
9. The reduction of intergroupal competition.
10. The decrease of speculation.
11. Higher rates of interest.
12. Lower values of securities.

XIII. VOLUNTARY SOCIALISM

Social sentiment and social action are not closely related. The difference, however, is well defined and the contrast so apparent that some working compromise between them should be found. Social sentiment is democratic or socialistic. Both these movements are leveling processes bringing men nearer to an equality by breaking down the barriers of prejudice, tradition and class difference that have kept them apart. Sentiment is thus a negative force removing barriers and not a constructive force reorganizing society in harmony with new conditions.

In passing from sentiment to action two well-defined programs present themselves—coercive action that becomes state socialism, and cooperation which as group action becomes voluntary socialism. The voluntary principle was the basis of socialism, but certain errors of the early socialists helped to bring about the transformation of socialism to its present coercive attitude. They appealed to the rational opinion of individuals biased by class and race prejudices. The so-called rationalist was in reality a disguised sentimentalist whose opinions were egoistic and whose action was unsocial. Opinions are consequences, not causes. Molding and reshaping a man, they create for him a new view in harmony with his new situation. They are therefore bad when inherited and good when acquired. The new is formed through social action; the old is impressed by imitation and argument. Action is better than thought when new situations must be faced. It is not the wrestle of thought with thought but of social group with social group that gives the final test in evolution. The early socialists studied social movements and interpreted them in the light of current thought. Marx read books and argued about the validity of premises. We should neither take the facts and interpretations of the earlier socialists nor Marx's arguments. The problem is not what were the facts or what were the arguments valid in 1848 but what conclusions do current facts warrant in 1912.

Cooperative farm colonies have not succeeded nor has profit sharing been a success. So much can be readily conceded. For the advocacy of these measures the early socialists merit the discomfiture that all prophets would have if they faced the outcome of

social progress. It is one of the paradoxes of progress that the march of events inaugurated by reformers moves in directions not anticipated, and often assumes forms to which their originators are radically opposed. No one would be more disappointed than the martyrs who have died for progress if they were here to-day to see what events have wrought. Voluntary socialism is not to-day what its originators anticipated, but it is here in a thousand observable forms. We should not go to Owen or Marx to discuss it, but should take it as we find it and describe it as it now exists. Every industry has changed from an antagonistic or individualistic form to one of voluntary cooperation. Social movements are on a voluntary basis from which observations may be made revealing the methods and results of social cooperation. Progress has not forced social groups into distinct classes, each with a bundle of interests to defend, but each interest has been made effective by the formation of a special group to promote it. We are all in many groups in each of which there are new faces. Our foes are not groups of antagonistic men, but incompetence, mismanagement and maladjustment. Our friends are thus personal and our foes abstract concepts.

This blending of individuals in a multitude of associations keeps opinion mobile and makes thought plastic. Out of each group some element of public opinion comes which rises into a principle and thus gets a validity which no argument can oppose. Even that which is coercive has a voluntary origin. If we have coercion in the future, it will not be the coercion of Marx but a coercion of principles and habits which now we accept as a voluntary expedient.

The best example of voluntary cooperation is the evolution of the modern banking world. Having had an uninterrupted growth for two centuries it has had time to show the results of voluntary action. State banks have never received popular approval, and large banks have always met with public opposition. A voluntary growth of banking action, opinion and morality was thus forced on the bankers whose axioms and usages have no other means of enforcement than the voluntary assent of those ruled by them. The result is that the bankers are the most social body in the world; they have also a high type of business morality. The new morality of the international world can be said to be a banker's morality, since its rules and traditions were first put in force by bankers. As the outcome of this voluntary growth of opinion, the banks are the most conservative

of all organizations. High prices and high rates of interest have been discountenanced, the long view has become the banker's view, while the gains of plodding industry have grown in favor above those of speculation and rash venture. The public still has complaints to make and doubtless the evolution of banking opinion is not complete, but it is interesting that these complaints largely hinge on the too great force of social usage. If one banker opposes a man or an enterprise they all follow suit. They thus effectively curb one another and elevate their social standards. There is practically no competition and yet for individual services there is a low range of prices and no disposition to take advantage of the public by short-sighted practices. Restricted competition, low prices and public spirit are thus combined in ways that reveal their tendencies and show what other industrial organizations can do when time and experience have developed usages bringing group action in harmony with public welfare. When an international struggle recently was prevented by the action of bankers, all applauded even if they failed to see what put the bankers in opposition to war. Long experience, however, has taught them that while a war may temporarily increase their profits, they lose by the destruction of capital and the lower rate of profits that follows its destruction. They may be as patriotic and as desirous of temporary gains as are other citizens, and yet the force of socialized banking opinion causes them to conserve public welfare. The bankers really form the one effective international group, and thus their action is based on the world's welfare and not on that of individual nations or classes. Banking morality is the highest morality because it lacks the limits that national, local or creed morality possesses.

We all see this when peace and war are at stake. What we forget is that the same instinct that restrains war also restrains useless construction. A new railroad may be advantageous to its promoters but it is as much a loss of national capital as if it has been used as powder in a battle. We think still worse of bankers when they refuse to help some industry or check the aspiration of some city or section for a rapid growth. The instinct that leads to the refusal is social, and raises the general rate of profits as definitely as would the checking of war or of rash railroad expansion. It is a wise judgment that says we have enough railroads, factories and business enterprises, and that capital should be used to increase their efficiency rather than

to make new rivals. This helps in the formation of trusts, and encourages the successful business man at the expense of his less active competitor, but it helps also to improve social relations and to increase social efficiency. This change in the conditions of survival has come to stay. Public opinion is sound not as it opposes such changes, but as it takes advantage of the improvements made and applies them in other fields.

The development of the railroads along social lines has not gone so far as with bankers, but the movement is in the same direction. Temporary profits, cut-throat competition and the arbitrary changing of the rate of dividend to influence the stock market have not ceased, but they have been checked in their operation. It is to-day true, as it was not true yesterday, that some men are too bad to be permitted to control a railroad. It is also true that railroads put their new capital in permanent improvements and not in track extensions. Large concentrated investments giving a lower but more permanent return, receive a preference thus bringing their action in line with public interest.

The trusts show fewer of these socializing changes because their history has been too brief to create the group sentiment that enforces them. In the history of their formation, we find that each failure led to the exclusion of the less social of the competitors. Every new attempt found the survivors more social in their inter-group relations, until the upward movement was complete enough to create a compact social group with a high sense of business honor. Say what we will of their outside conduct, the greater and firmer the business organization, the more compact is its social opinion and the keener the realization that personal honor and business ability go together. Social power is to-day of more consequence than brute superiority. Survival now is not an individual struggle, but a success within the limits of group action.

Labor organizations are crude and yet progress lies in their upbuilding. Any outside control of a group is bad, because it is a dogmatic suppression instead of an internal evolution. Sound group opinion will grow among the workmen only as it is formed by the success of their organizations. Revolutionary ideas are born in failure; they come from bitter experience and from short-sighted views. Success tempers and elevates. It makes group opinion social and group action conservative. Give the workmen what they

want and their interests will be found to correspond to public welfare. By this I do not mean to claim that the interests of all laborers and all employers coincide. That would go further than present evidence warrants. But it is true that the interests of permanent investments, and of the workmen who operate them, would be promoted by better conditions and a higher wage for the workers. Organization gives to each party the ability to enforce its urgent claims and creates a willingness to yield where the concession is less vital. No one but the group can form its restraints or elevate its social tone. The present state of labor disputes is bad because both sides carry such a load of dogmatic opinion. Only internal strength can uproot dogmatism. The greater the strength, the more empirical the judgment, the more social is the action. The cure of struggle is the socialization of the contending forces.

There is such a wealth of examples of the action of voluntary groups that the only difficulty is that of selection. Sixty years of successful evolution force a change of judgment from prediction to fact. Instead of looking ahead and prophesying we can now look back and review. The evolution of a social group is from interest to sentiment, and from an admiration of superior persons to that of programs. Superior men, the hero and martyr, unite groups; their subsequently formed ideals elevate their standards. Evolution is thus from struggle to cooperation, from personal control to social control and from concrete rules to abstract principles. The growth of social control is from persons to words, from words to artistic expression and from art to religion. A word or phrase can unite people and hold them together more permanently than can any leader. Art is more expressive than words, while the cosmic emotions of religion are deeper and more unifying than the social awakening of language or culture. The social groups grow larger and the opposition of interests diminishes as each of these stages is reached. The lower diversity of interest is transformed into a higher unity. The strength of social bonds lies in the freedom that led to their perception and acceptance.

There is also a change in judgment accompanying this growth of social sentiment. Pragmatic judgments replace the dogmatic decisions of the earlier stages of progress. Pre-judgments are thus transformed into post-judgments; experience wins over opinion. The state is the last surviving form of dogmatic opinion but even

here the yielding to voluntary action is evident. Government is now party government and political parties are organizations held together by assent. Back of the party is a multitude of smaller voluntary organizations whose activity gives it its force. Government action is thus not a public decision, but the action of some voluntary group who for the time act as the state. Laws are thus made and when made are enforced by some active voluntary agent organized along social lines.

To have state socialism would not create a new power above men but would make emphatic the voluntary political organizations which control the state. There would be the same formation of group within group until the real control fell into the hands of the more active and the more social. We are governed by minorities just as industries are controlled by them. The problem is not to escape control but to transform society so that wisdom dominates. Voluntary grouping evokes an ability to select the better which when given full expression brings group action and social action into harmony. Sentiment and judgment are one when social groups are blended into one society. The first axiom of social advance is, never take the chance of conflict when compromise is open. From this simple creed all social progress comes. The full moral code is but a more explicit statement of what this axiom implies. The way of peace is the way of prosperity and there is no prosperity without cooperation, toleration and compromise.

XIV. THE AVOIDANCE OF STATE SOCIALISM

The preceding discussion has shown the difference between socialism as a sentiment and socialism as a mode of thought. State socialism is not this sentiment but a means of realizing it. It is a program for attaining industrial ends and must be judged in its relations to rival programs. The real contrast in programs is between state socialism which is coercive in its action and voluntary socialism that has back of it the cooperative action of the various social groups. Voluntary socialism was weak because it pictured early agricultural conditions and gave to each group a greater independence than modern industry permits. This agricultural grouping was made impossible by the growth of centralized industry. So long as the scale of production was growing the evidence seemed to show that industry in its final form would be unified under state control. State socialism is coercive industrial action. The centralization of industry appears to leave no other alternative. It must be either state action in the interests of the masses or their exploitation by those who acquire industrial control. Such was the picture of 1848 and on it the recent development of socialism has turned.

The conditions of 1912 are different from those anticipated by the prophets of 1848. Centralized industry has had a great development but its limits are now plainly seen. It is one of the elements of the present industrial situation but without power to dictate to other interests. This failure to control leaves open the way for other forms of social action of which so many are in active operation that the trend of social development is discernible. There is no industrial group that does not have a voluntary organization uniting its members and voicing its claims. The industrial groups never were so diverse as at present, nor so intense in the social control they exercise. There are large groups and strong groups but no dominating group. The law of social growth is that of the diffusion of interest. This is a stronger principle than that of the centralization of industry, and with its dominance comes the strengthening of local industries in each of which is a social group united both in feeling and interest. What type of action meets this condition of diversified industry? There must surely be some way to progressive action in such a

society, and this way must be different from the state socialism a centralized industry would force on a nation.

Back of these two types of industrial organization are two modes of reaching decisions that must be contrasted before the issue is clear. Decisions may be either dogmatic or pragmatic. Dogmatic decisions are based on predetermined data and enforced by racial or class sentiment. A dogmatist can determine what should be done before a given case arises, because acts are judged by standards set up before action takes place. Pragmatic decisions are made after the event and are based on evidence that it creates. Every pragmatic judgment incorporates new material in each decision by which it is modified.

Judgments also differ in being coercive or cooperative. Coercive judgments are made by a strong group and then forced upon the weaker classes. A good illustration of this is the subjection that men have forced on women. The strong make the law to which the weak must submit. The opposing principle is that of cooperative assent. An example of this is found in international law. No modern nation is strong enough to impose its will on other nations and hence general action must have the assent of all interested. On this basis has grown up a series of decisions cooperative in origin that have a force no nation can resist. These decisions are pragmatic. International conferences are not called to settle hypothetical cases. The subjects arise out of unexpected circumstances and the assenting nations act with a full knowledge of what the effects of the decision will be. There is no blind alley in international law. It is conscious cooperative action based on a full knowledge of the losses to which each nation must submit and the gains it secures. The pressure of such a situation forces each nation to yield on points of less importance in order to secure that which it deems essential. Each nation thus gets an advantage out of international decisions just as it does out of international trade. In both cases what is less desired is given up to secure what is more important. Pragmatic decisions thus maintain peace where coercion and dogmatic predetermination would fail.

The key to all social progress lies in accepting this principle and applying it to complex industrial situations. Industrial groups must cooperate in decisions just as nations do. Such decisions are pragmatic, the judges having full knowledge of the case, deciding

only on events that have already transpired. Each party must yield the important to secure the essential. Such a method is not mere theory but is in active operation. It means the decision on industrial differences not by the courts nor by legislative acts but by commissions formed after the dispute arises, with judgments limited to present cases and secured with the assent of all parties concerned. The courts and the legislature decide cases on predetermined data and impose their decisions by force and not by cooperative assent. Majorities thus crush minorities instead of raising them into a coordinate position. Take as an illustration the dispute about protection and free trade. The free trader asserts that if an industry fails to sustain itself under foreign competition it should be permitted to die out. The protectionist on the contrary asserts that every industry should have protection enough to enable it to pay current wages. Both of these contentions are dogmatic and the decision is made on predetermined data. Either principle fully acted on would bring on a conflict to be decided only by the coercive power of a majority vote to be reversed by every temporary whim of the ruling element. The pragmatic method would demand decisions based on evidence coming out of the events to be judged. On the one hand capital and labor must be employed, on the other the consumer needs protection against needless waste of productive power. Every case if treated individually offers some compromise giving both factors what they most need. No legislative body can rightly settle any such case on predetermined evidence or by deductive principles. The facts in dispute must first arise and then upon them some cooperative decision must be worked out. Dogmatism and pragmatism stand opposed in every industrial decision. The one leads to state socialism and the other to intergroupal harmony.

The lack of progress in settling tariff disputes may rightly be compared to the steady strides towards international peace. The need of peace is certainly as urgent as the need of free trade. Both are based on sound principles that must some day be universally accepted. The advocates of free trade, however, set up dogmatic principles based on predetermined facts and from them they judge current events. They do not compromise with opponents but carry on a destructive war out of which increased animosities come. In contrast to this, the advocates of international peace pursue the pragmatic method. Single evils are isolated from the general effects

of war and eliminated by the general assent of combatants. Every nation knows what it is doing when it limits the sphere of war and sees in it some advantage for which its assent was given. This pragmatic process would be as successful in industrial matters as in international disputes. There is no majority and minority in trade relations nor is it a case of the good against the bad. As many industrial groups are involved in trade disputes as there are independent nations in international conflicts.

Each age is ruled either by the judgments of past ages expressed in sentiments, tradition and law or it judges its own acts, expresses its own will and avoids the evils it sees instead of those its predecessors assumed would exist. The rules of a stable advancing civilization are concurrent estimates of present welfare and not predetermined judgments based on ancestral anticipations. The change from one basis to the other is not a sudden revolution but the gradual result of awakened public opinion. We have really gone much further than is apparent in the application of the newer attitude in legislation and in settling trade disputes. The many specific examples of its application need only to be recalled to show their breadth. The referendum and the initiative are crude forms of concurrent control. They lack, however, the cooperative assent needed to make them effective. If such legislation were limited to cases where cooperative assent had been previously obtained, the legal enactment would be merely a satisfaction of agreements already secured. The steps would then be like an international tribunal whose acts are only effective when ratified by the concurring nations. It is only formal justice that needs preorganized courts. The unsocial acts should be condemned by them but in industrial disputes their power should be limited to enforcing delays and in the protection of public rights until a properly constituted tribunal can be formed. Choosing judges, after it is known what the dispute is about, is better than recalling judges who make bad decisions. The trouble arises not from the shortcomings of the judge but from the temper of the precedents on which he relies. When current judgments displace ancestral anticipations of coming evils the courts and the public will be in harmony as to the remedies needed and both will replace their dogmatism by cooperative assent. The law should merely register and the court apply decisions reached by mutual concessions of the groups concerned.

In the past there has grown up a buttress to individual liberty in the form of political rights. When our national constitution was formed no bill of political rights was included. The defect however was soon remedied, thus creating a limitation to majority rule which has been an important element in national stability. If this is true in regard to political rights, it is equally important in industrial disputes where suppression of weak groups by the strong is as dangerous as is the political dominance of majorities. There is as much need of economic rights as there was for political rights. A right is an effectively expressed sentiment that carries with it a self-condemnation of its violation. It gives the individual or group a clear basis on which to make an appeal and furnishes a test of where the strong are over-riding the weak. Such a bill of rights could be readily formulated; it would check aggression and arouse sympathy in behalf of the industrially wronged. In another place⁴ I have formulated a bill of economic rights that would correspond to the political rights now a part of our constitutional guarantee. I will restate some of them so that the content of such a bill can be apprehended. The more obvious rights are these:

- The right to security.
- The right to publicity.
- The right to an open market.
- The right to customary prices.
- The right to share in national prosperity.
- The right to cooperate.
- The right to decision by public opinion.
- The right to wholesome standards.
- The right to leisure.
- The right to cleanliness.
- The right to recreation.
- The right of women to income.

The real dangers of state socialism do not lie in its bolder schemes, but in policies that appeal more directly to social sentiment. Opposition to banks, railroads and the trusts is not so much against the present form of these industries as to their high profits. We may expect a strong movement that has the equalization of profits as its end, but there is nothing in such a movement that would lead

⁴ *Theory of Prosperity*, chap. vi.

to the nationalization of these industries. There is, however, danger wherever social sentiment is made the determiner of public policy. The strongest emotional appeal of state socialism is for pensions and for a minimum wage. The road to them has already been opened by our generosity to military heroes and by the precedents set by foreign nations. In the appeal of the industrially poor, however, we should not forget the long standing appeal of those afflicted with disease or inherited defects. The problem is not whether industry or heredity create the greater evils, but which of these groups of evils can be first attacked and removed. We know the source of hereditary defects and have also learned that they cannot be cured by environmental improvement. The defective and delinquent classes must be segregated if they are to be eliminated and thus a place made for a better stock. It is, however, a temporary burden to be removed after a generation of generous care and faithful attention. The science of eugenics tells us how to proceed and sound reasoning makes plain the social uplift that would follow its application. In this field a social appeal can be made fully as strong and more effective than in any other field. The sources of industrial evils are removed by altering the conditions under which industry is carried on. It is against these conditions that social sentiment should turn. Premature old age should be prevented rather than supported. Educating the young to avoid dangers is better than pensioning those who fall into them. Changes at the source of industrial evils effect more than the same effort in time and money used to alleviate the suffering caused by bad conditions. It is a good axiom never to act until the source of an evil is known and then to attack the source and not the result. Were this axiom acted upon we would first remove the evils due to heredity and then with a clearer vision reorganize industry so that the worker is conserved and elevated. We can mold industry as we will when we see what form we wish it to take.

The general principles of cooperative action, however, are more important than their specific applications. Either majorities have the right to impress their ideas, sentiments and institutions on minorities, or social decisions need the approval of the groups affected by them. The one method is that of dogmatic impressment, the other of cooperative assent. There is no compromise between ideals so different in their origin and in their goal. Industry must

square itself with other forms of progress, and as it does coercion and exploitation will be displaced by cooperative action. When the state merely registers what mutual assent has already attained industrial peace will be as stable as international peace will be when arbitration is universally applied. Both fields demand the same methods: victory in either field will strengthen the cause of peace in the other.

XV. THE MEASURE OF PROGRESS

Last summer I met a Second Adventist who, in harmony with the views of his sect, saw in the passing events proof that the world was approaching its final crisis. The Bible, history and current events were interpreted in light of the belief that they gave evidence of an immediate catastrophe. To-day such views are striking because they are rare. Yet, odd as they seem, they are a remnant of old beliefs that before the age of science were generally held. No one then thought that the world or its civilization was enduring. Every one looked for signs of the coming end and accepted without question the various prophecies based on such data. A belief in progress is new. If man was made perfect and fell, tests of devolution constitute the only science worth investigating. The devolution of the Adventists has been discredited by the progress of science. Social devolution is even now a common belief. It colors history, gives rise to revolutionary views of politics, and makes economic doctrine pessimistic. Were it merely an academic belief, it might be left to die out in its own way. It is, however, an important element both in socialistic literature and in economic thought. That capitalism must go down in a tragedy appeals to an instinct too deep seated to be ignored. The same is true of the oft-stated economic doctrine that the resources of the world are diminishing, and that in the crash civilization will go down before some form of barbarism.

While the orthodox economist and the socialist who use these pictures have a greater appearance of presenting the truth and state their arguments more in harmony with history and science, the sentiment they evoke is the same as that the Adventist arouses with his crude pictures of ruin and failure. They are pre-evolutionary views, appealing to fear and wonder, and resting on a confused statement of the facts.

Such views are hard to controvert because of the crude logic their advocates use. They review current events for evidences of disaster and then by an accumulation of historical data, create a picture of misery and failure. If their view is opposed by a presentation of the happier phases of life, they call their opponents optimists. Scientific economics is thus made to consist of depress-

ing facts that call for forceful action. If the optimism of Godwin and Owen is put against the pessimism of Ricardo and Marx, it is, indeed, hard to decide which is the better. They both assume that happiness is the normal state of all men, and then they try to show how social institutions fail to secure it. But is the contrast thus made valid and fundamental? Are men either happy or miserable or are they under ordinary conditions both happy and miserable? If the latter is the reasonable attitude, evidence as to the happiness or misery of mankind is beside the main issue. There are no valid tests by which pleasure and pain can be quantitatively compared. The individual judgment is usually clear, but we have no comparative means of measuring happiness and hence the judgments based on such evidence are not of much consequence whichever side they are on.

Believers in progress are not in the same position to-day as they were in the age of Ricardo and Marx. The theory of organic evolution has been unfolded and from it come tests both of evolution and devolution. A theory of progress should now start not from surveys of happiness and misery, but from the evidence of the general evolution in which both men and society have a part. From this it will be seen that struggle brings both happiness and misery—happiness to the successful and misery to the vanquished. The presence of misery is, therefore, no evidence of the failure of evolution. We evolve through misery as much as through happiness. It is only the abiding effects measured in physical units that tell which force is dominant, and to these tests we should turn to decide the truth or falsity of human progress.

If socialists had formulated a law of the persistence of misery instead of the increase of misery, they would have been on safe ground. We know that misery persists but we have no measure of its increase. Happiness tests have been displaced by evolutionary standards which are capable of definition and measurement. Changes for the worse in physical conditions are likewise no test of devolution. They accentuate struggle and hasten the elimination of the weak. Nor can we infer retrogression from deductions based on the law of diminishing returns. Professor Carver in a recent article⁵ gives three *a priori* tests of diminishing returns and hence of retrogression: the spread of population, the concentration of population in cities and the introduction of inventions. He contends that population would not spread, cities would not grow nor would inventions be made

⁵"A Bugbear to Reformers," *Popular Science Monthly*, May, 1912.

unless they were forced by a pressure of deficit. They are thus evidence of increasing misery and represent what mankind should avoid. Such a position is pre-evolutionary. If an animal spread over a continent, a biologist would assume that it was improved by the change. So, too, the presence of more animals in a locality or in closer relations to each other would indicate not degeneration but the evolution of new psychic qualities. Invention is also an index of greater mental power and not of greater devolutional pressure. That the spread of population and the growth of cities often increase misery may be readily admitted without in the least impairing the proof that progress is also taking place.

Devolution cannot be predicated from a knowledge of environmental conditions no matter how poor they may be. No accurate measure is possible until the reaction of the animal to this environment has created definite structural modifications. Devolution is a matter of animal structure and not of environment. It is retrogression without growth. Of it there are two tests, revision and retardation. Animals retrogress by going back to some ancestral form, or they are retarded in growth and thus do not attain a full development. Devolution does not create new forms: it revives old ones and prevents the appearance of the higher attributes. Degenerates should be cared for and finally eliminated, but their misery should not be added up to arouse social sentiment or to determine the effect of social change. We cannot measure devolution in terms of civilization, of happiness and misery, of wages or of poverty. The evidence of statistics and history is poor when compared with that of biology. The burden of proof is thus against those who would show an increase of misery without some compensation in growth or in social uplift.

In changing from the consideration of devolution to evidence of progress a contrast must be made between political stability and social evolution. The danger of political instability has been so great and its evils so manifest that political theory has evolved as a theory of stability rather than of progress. Political stability has arisen in modern nations by substituting majority rule and average happiness for the cruder tests of numbers and strength. Political theory assumes that an equal distribution of happiness gives greater security than its concentration. Wage theories and subsistence theories have thus arisen through which the equality of man has been proclaimed. The doctrine that every man counts for one,

checks aggression when applied to food and wages. It leads, however, to a pure individualism in which group action has no place. Society is changed from an organism to a mob, thus checking the rise of social sentiment through which a higher unity comes. From brute strength to majority rule is progress, but still more comes when minorities through compromise and toleration displace the need of majority coercion.

When the difference between political stability and social evolution is recognized the need of a new measure of progress becomes apparent. We assume that when men have equal income, they are equally happy. While this political axiom leads to political stability, it does not help to create new adjustments. To get evolutionary tests, we must start from the physical tests that have back of them the authority of science. Thought, motive and product although indices of a higher mental life, are not measurable in masses so that a transfer may be made from individual judgments to social predicates. The one sure test is the structure through which they arise. If structures, mental, physical or social alter, we may be sure that a racial evolution has taken place. To accurately measure thought, motive or product, we need a complete record of all thought, all activity and all products. Such history and such statistics are impossible. The history we have is a record of social struggle and not of human activity. Few would claim that the tabulated statements of thought, action and wealth are accurate enough to make them available for social deductions. Fortunately, however, there is one test that abides and reveals the net result of all past action. Structure evolves through pressure of thought, motive, action and product. What people do becomes history; what they get becomes happiness: the abiding effects of what they do and get become social structure. Action in social terms is character; product ensures happiness; neither of these is inheritable. Only structure is passed along and modifies the race. For this reason social measurements improve as they pass from activity to the product of activity, and from this product to the structure that shapes the activity.

The first test of structure is its activity. The more active are the more advanced in organization. The second test is in surplus. This measures the economy of effort and the excess of return over cost. The third test is invention. This is the measure of progress in thought. The fourth test is wealth. It shows the structural changes in the environment which remain to aid future generations.

The fifth test is the growth of will power. Will is more than the abstract power of choice. It is surplus energy moving through improved mental mechanisms.

Social changes should show more than the physical background in structure and yet should be directly related to it. Viewed in this way the first social measure of progress is the desire for intenser forms of happiness in the place of quantitative satisfactions. The second is the removal of fear. The third is the stability of social institutions. The fourth is the growth of voluntary associations. The fifth is the growth of the spirit of toleration and of decision by compromise instead of by struggle. Each of these changes indicates a growth of social structure and an advance in social evolution. There is no mechanism for social degeneration. If it comes, its source is not in society but in its physical background. No social evidence can prove decay except as it corroborates what physical retrogression has made plain.

Progress in these physical phases is beyond dispute. The burden of proof is against those who use historical examples or a crude tabulation of social facts to disprove what more fundamental evidence shows to have an evolutionary support. The new tests are so plain that they can readily be set over against their pre-evolutionary predecessors. Thought is being modified to meet the new conditions even if it has not gone far enough to give the new an irresistible force. This point I shall not argue but will illustrate by putting in contrast the older and the newer tests of social improvement.

	OLD TEST	NEW TEST
In life	Happiness	Health
In physical superiority	Strength	Endurance
In mental superiority	Understanding	Originality
In production	Population	Wealth
In social organization	Liberty	Cooperation
In character	Integrity	Efficiency
In rivalry	Brutality	Manliness
In disposition	Amiability	Generosity
In logic	Dogmatism	Pragmatism
In business	Shrewdness	Squareness
In art	Appreciation	Expression
In religion	Submission	Inspiration

All these tendencies have a common source and a common measure. They show the trend of progress and put its result on a firm basis. The lesson is plain. Prophets of disaster are a remnant of an older epoch. The new economics rejects superficial facts and the dogmatic attitude they presuppose. Its evidence is corroborated by organic changes that cannot be reversed by the effect of occurrences of present interest but of no permanent value.

XVI. THE OUTLOOK

While I cannot claim to have made a complete restatement of economic theory, enough has been given to show the nature of the thought transformation now taking place. It is essential to recognize that we have passed from one epoch to another and that our principles and facts must be correspondingly modified. We live in 1912 but think in terms of 1848. This is due to the fact that several men then expressed the dominant tendencies so forcefully that their mode of thinking has been impressed too deeply to permit current facts to have their full weight. The past epoch was one of natural and class readjustment. It intensified struggle and aroused class antagonisms. It is a mistake to give much weight to the evidence of this epoch: its appeal was after all local and temporary. It is even worse to attribute the thought development to any one man. Marx was as much a creature of this environment as was Mill, Carlyle or Carey. They had the same facts before them and acted on common principles. Their differences are details for their followers to wrangle about. Their similarities are a common heritage forcing us to act in a different way from what we should have done if this epoch had not remodeled social concepts. The national and class readjustment has now taken place, struggle has been limited, and national sentiments are turning into new directions. We can, therefore, tell something of the trend of events and of the forces now in the making.

Two results of the preceding epoch form the basis of the anticipations I now venture to give. One is that political stability has been secured. All of the nineteenth century thinkers were filled with dismal forebodings as to the stability of modern nations, and this fear had much to do with the forecast they made. Mobs can now be as readily handled as could an attempted invasion of barbarians. The fall of civilization from either of these sources is no longer to be dreaded. Nations and classes are stable units. It is economic fact not brute passion that now determines public opinion.

The second fact equally apparent is that we have entered a new epoch. The industrial revolution through which modern nations have passed has had four recognized epochs. The first may be called a national economy and in it the mercantile school voiced the demand

for local industries. In the main this economy was due to the division of labor and to the spread of industry to new regions. The second epoch was that of free trade, in which England comes to the front as the representative of advanced industry. The third epoch was an economy of unused resources: during this epoch there was a spread of agricultural population and the rise of new nations, of which America is the prototype. The fourth epoch was that of large production, in which concentrated wealth became the controlling power both social and political.

If these epochs had brought industrial evolution to a close, the anticipations of Marx would have been realized. The poor and the rich would have been isolated and all struggles would have resolved themselves into a conflict between the two. But evolution did not stop here. We have entered into a new economy in which personal and local advantages are exploited as effectively as were the centralized advantages of the last epoch. The present struggle is not between the rich and the poor but between centralized and localized wealth. Personal and local advantages are much more numerous than are those on which the success of the great industries turn. Political control is thus in the hands of those interested in local industries and in personal income. Under these conditions, the old contrast between the rich and the poor has ceased to be vital and in its place will come a new alignment of the social groups.

To determine the changes that will thus be wrought a more definite theory of progress is needed. Prediction in the past has been prophesy based on historical interpretations or the picturing of Utopian ideals. More definite measures of progress than either of these are now available. Progress can be measured through the increase of wealth, thus giving a material interpretation: it can be measured through the structural changes that evolution has wrought; or it can be measured through the social control of classes or races.

Social control is the repression of the weak by the dominant. Acting through acquired characters it makes no structural change. Any shift in industrial conditions or in the location of natural resources can bring a new class to the front and with their ascendancy a new form of control is exerted. Of these forms of control, democratic control, which is the control of numbers, is especially important. Democracy has adopted without question the utilitarian axioms and thus has accepted the quantity and distribution of happiness

as the measure of progress. Every one in this calculus counts as a unit and no one as more than one. With happiness measured in material goods, this standard makes the distribution of wealth more prominent than its production. The control of income seems a social necessity and with it arise new functions for the state.

Social control rests on opinions and not on social structure. It is a development of thought and not of activity. It is hard, therefore, to predict what changes in control will be made other than that utilitarian control is likely to undermine the control of precedent, tradition and wealth. This would create a simpler society than we have at present, but it would not be a final nor even stable form of society. Structural development would continue and with each marked change, opinions would alter and thus create a new form of control. No measure of progress is, therefore, valid that does not recognize the need of structural change and the fundamental character of alterations made by it. Opinions about progress are of little consequence unless we can show structural changes that bring what we predict.

Such statements seem vague, but they are readily transformed into objective standards. Social structure shows itself in three definite forms: in health, in wealth and in culture. We cannot tell how happy a man is, but we can determine the state of his health. Income is a better test of welfare than happiness, but it is not so accurate a test as health. The activities connected with production are predetermined by the situation in which it takes place. Distribution, however, is a matter of opinion. There are no income structures to shape its distribution as there are productive structures to create it. Structural activity produces wealth: men distribute it. This is a revised statement of Mill's introduction to his theory of distribution but it is no less true in its new form than in the old.

We think of culture as the final product of civilization and not as one of its elements. Yet if we look at the facts, we find that culture is an index of activity, not of ancestral tradition and opinion. Social tradition has been broken more in the field of culture than elsewhere. It is no longer the admiration of the old or of the foreign but an intenser form of enjoyment than that yielded by traditional pleasures. Wealth is the consequence of effective activity in production. Culture is the result of more satisfying combinations in its consumption. Both are in a like manner determined by struc-

tural activity. Every new product modifies the direction which culture takes.

In former descriptions of progress, I divided it into two parts, a pain economy, in which fear and suffering drive man to his daily tasks, and a pleasure economy, in which the motive of action is the pleasure derived from the goods enjoyed. I now regard this division as defective. To love pleasure is a higher manifestation of life than to fear pain; but the pleasure of action is in advance of the pleasure of consumption. Action creates what pleasure uses up. This would divide progress into three stages: a pain economy, a pleasure economy and a creative economy. Each stage has its own mode of thought, and its own social institutions. To visualize the elements of these stages, I have put them in the following table:

STAGE OF PROGRESS.	FORM OF STRUGGLE.	FORM OF CONTROL.	CHARACTER OF THE SOCIAL BONDS.
1. A pain economy.	Race struggle.	Ancestral control.	Blood bonds.
2. A pleasure economy.	Class struggle.	Wealth control.	Interest bonds.
3. A creative economy.	Self direction.	Character control.	Social beliefs.

TYPE OF THOUGHT.	THOUGHT LIMITATIONS.	KIND OF PHILOSOPHY.	TYPE OF MORALITY.
1. Theological.	Substance.	Anthropomorphic.	Traditional.
2. Rational.	Space.	Material.	Utilitarian.
3. Pragmatic.	Time.	Ideal.	Telic.

The transformation of activity and thought which this third economy imposes has already taken place or at least the change has gone so far that its outline is manifest. It is more difficult to predict the uplift in sentiment that it will bring. The emotions of the older epochs were centered about religious and race antagonisms. Evils have been clearly perceived objects with definite local manifestations. Heroes and gods also made a personal appeal and kept the emotions too specific to bring out their social possibilities. To build up social sentiments demands the elimination of struggle and fear on the one hand, and of personal renunciation and hero worship on the other. Social life seems incapable of making use of these primitive reactions and thus lacks the effectiveness of the older more animal life. Neither the rational nor the utilitarian logic has ever done more than to arouse mild cosmopolitan sentiments that pleased the philosopher but failed to vitalize the man of the

street and shop. For such a condition there must be a remedy if the new life is to arouse men as effectively as did the old. Sentiment and thought should not be antagonistic nor should sentiment be crushed by the growth of logic and science. To prevent this catastrophe, thought must be reorganized so that its concepts create emotional reactions as definite and as prompt as did the vivid relations that struggle originated. Thought stimuli must be put in the place of sense stimuli, and thought ends in the place of the victory struggle sets as a goal.

A step has been taken in this direction by the shifting of interest from the past to the future. History is a history of struggle, and usually of defeat. By the emphasis it gives to retrogression and decay, it increases struggle and makes present personal success vivid and vital. The thought of progress gives a new turn to the emotions by giving them a new goal. We become social as we look forward; more animal as we look back. The dread of the future must be changed into an eager anticipation before the new emotions will be as vivid as the antagonisms that the past provoked.

From this it is easy to see why the future should become prominent in socialistic schemes before a like reorganization of the popular thought can take place. Progress can not be visualized in past events. Its goal is ahead and must come through a social reconstruction of ideals and a material reconstruction of wealth products. Progress is necessarily economic because its embodiment is material and environmental. Social antagonisms thus stand opposed to progress. From this it seems to follow that progress comes through emotional suppressions, thus creating the Utopian stage illustrated by the early English socialism. Marxianism is a reversion to the primitive attitude and the acquisition of a driving power in class antagonism. Socialism has not, however, abandoned the earlier ideals, contradictory as they may be to the material tendencies of Marx. Back of conflict loom up clearly defined pictures of social unity which give a charm to modern socialism even if the clearness of the picture is dimmed by the terror of the immediate struggle that is to bring them. Socialism is thus a half-way house from the old to the new. It unites the beauty of what is to come with an emotional awakening evoked by past conflicts. To look both ways and to get inspiration from both views is contradictory but effective. Purely Utopian reconstructions do not arouse vivid motives to action. Cosmopoli-

tan progress and utilitarian measures fail because they evoke no emotional machinery to carry men toward the ends they seek. A goal less vague than the cosmopolitan and more social than personal ends must be outlined before sentiment and thought can direct activity toward new ends as forcefully as the old ideals did.

I reach this conclusion by assuming that surplus promotes activity and that activity transforms the natural surplus into wealth. With wealth come price relations through which ancestral control is broken and wealth control put in its place. Price relations give rise to budgetary concepts. In the endeavor to bring the family budget to an equilibrium, activity is increased and consumption is put on a cultural basis by increasing the intensity of new wants. This brings on a self-repression which is the essence of character building. The struggle for supremacy is now changed from a race and class struggle to an internal struggle for self-control. Primitive feelings and instincts are repressed, sex and appetite are curbed, and cultural motives replace the older sentiments due to race and class antagonisms.

These newer struggles are growing elements in English and American life. A higher culture will result that makes decisions individual and personal rather than racial and class. There will be no unity of race, of language, of history or of ancestral tradition, but there will be a new type of men forced into a common mode of living by their culture, education and activity. Such a civilization is a reality among the English-speaking peoples and its spread to other races and regions is only a matter of time. To make its reality apparent, and to give it an emotional force, it needs a name which it now lacks, for the many nations and regions to which it has spread keep any historic name from being appropriate. To call it English or American is to prevent the united appeal which is so much needed to give it force. Anglo-American has a racial limitation that must be avoided. As a mere suggestion that may lead to the adoption of some appropriate term, I offer the word "Angloid," which seems to come nearer to what is wanted than any other term. It implies a heterogeneous origin and thus seems weak, but this weakness is a real strength as it permits a fusion of all elements making for a higher civilization and an energetic personality. The unity is in the type, the culture and in the resulting character. We progress not through an heredity but through our improved environment.

With or without a name, this new civilization will impress itself more deeply on the coming age. The new and the old types of culture, motive and character are bound to come into sharper conflict as the century advances. The older tendencies are coercive and will strive to impress themselves as state socialism. The newer forces will express themselves in voluntary association. It will be a struggle of tradition, race and class with the blending influences that make for unity and character. The history of the coming age will be a chronicle of such results as a future historian can describe better than an economist can predict.

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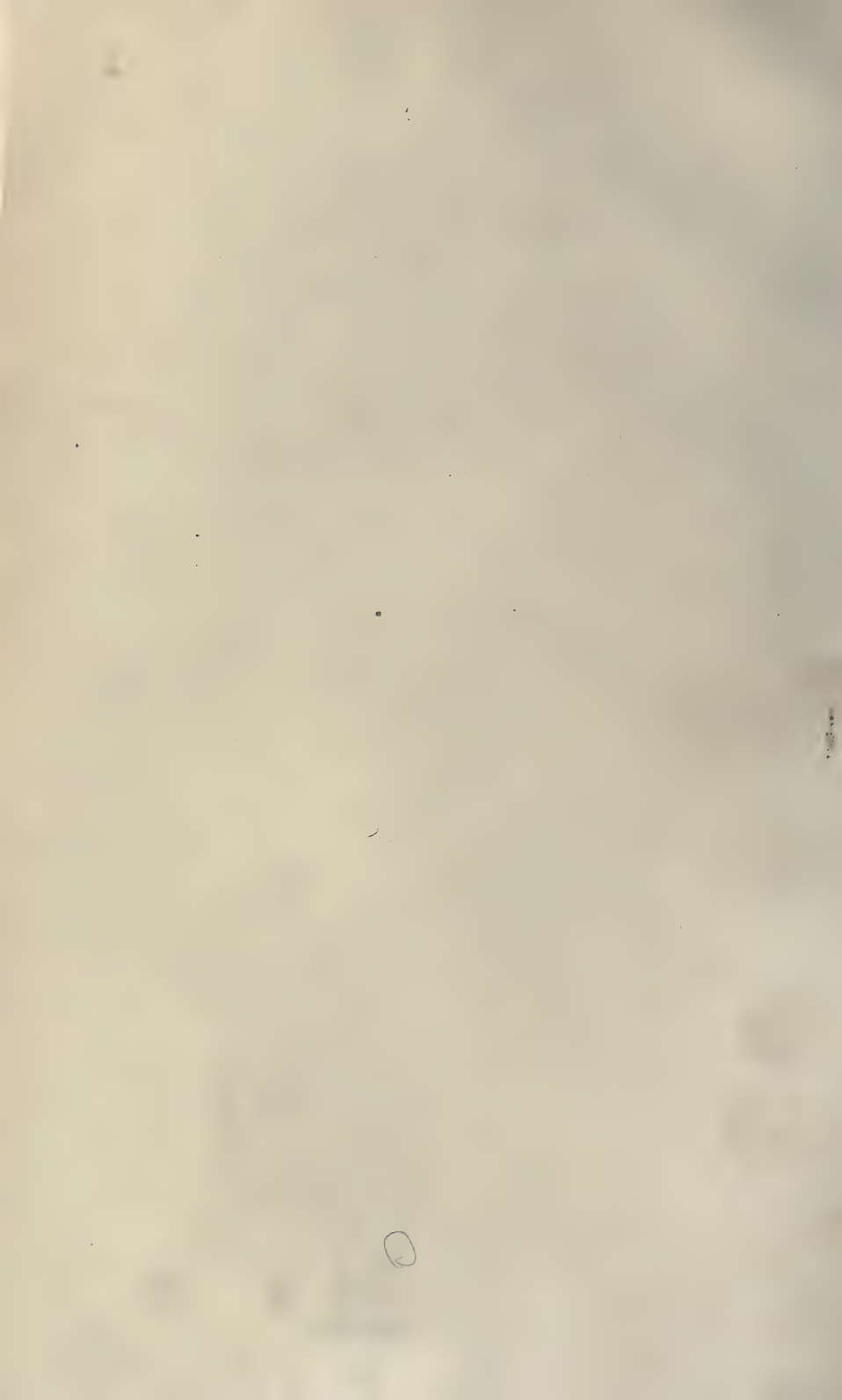
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